No. 718

No. 14499

Office - Supreme Court, U. S.
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# United States
# Court of Appeals
## for the Ninth Circuit

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PAUL E. PLESHA, JAMES E. MABBUTT and MYRON L. KERN, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

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# Transcript of Record

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Appeal from the United States District Court for the Northern District of California, Northern Division

FILED
JAN 26 1955
PAUL P. O'BRIEN,
CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, California—12-30-54

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States "to whom you will then owe whatever payment the Government made on your account".

(c) The usual publicity, as indicated in answer to Interrogatory No. 3(a), supra, was given to the issuance of Administrator's Decision 513, and any persons interested enough to inquire were advised.

Interrogatory No. 4

Did the Administrator of Veterans' Affairs, prior to October 6, 1942, make or issue any rules or regulations concerning the protection of private insurance under Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940? If so, please furnish copies of all such rules and regulations.

Answer to Interrogatory No. 4

On December 6, 1940, regulations, copy of which is appended hereto as an exhibit to this answer, were duly published by the Veterans Administration.

Interrogatory No. 5

Did the Veterans' Administration or any branch of the Armed Forces prepare and circulate to members of the Armed Forces, prior to October 6, 1942, any pamphlets or other written explanations of Article IV of said Soldiers' and Sailors' Civil Relief Act of 1940 (whether prepared and distributed pursuant to the provisions of Subdivision (2) of Section 401 of said Act, or otherwise)? If so, please furnish copies of all such informational material.

Answer to Interrogatory No. 5

Supplies of Veterans Administration Insurance

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In the District Court of the United States, Northern District of California, Northern Division

No. 6326

PAUL E. PLESHA, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

## COMPLAINT

Plaintiff alleges:

I.

That this action arises under the act of October 8, 1940, sometimes known as the National Service Life Insurance Act of 1940, 54 Stat. 1008-1014, Title 38, U.S.C.A., Sections 801 to 818, as hereinafter more fully appears.

II.

That plaintiff resides in the City of Sacramento, County of Sacramento, State of California, which is within The Northern Division of the Northern District of California.

III.

That on or about the 1st day of May, 1942, defendant issued to plaintiff a policy of life insurance under and in accordance with said National Service Life Insurance Act, such policy being numbered N1927254 and being in the face amount of Ten Thousand Dollars ($10,000.00); that said policy was maintained in full force and effect by payment of the premiums thereon to and including the 31st day

of October, 1945; that effective November 1, 1945, the face amount of said policy was reduced to Five Thousand Dollars ($5,000.00); that said policy as so reduced, was maintained in full force and effect by the payment of premiums thereon to and including November 30, 1945.

IV.

That in accordance with Section 602(f) of said Act (38 U.S.C.A. Section 802f) and Regulations issued pursuant thereto by the Administrator of Veterans' Affairs, a special dividend was declared by said Administrator to be paid from the surplus in the National Service Life Insurance Fund to each holder of a policy issued under said Act prior to the year 1948 who should file claim for such dividend with said Administrator.

V.

That on or about the 1st day of September, 1949, plaintiff filed with said Administrator his claim, on the form provided by said Administrator for such purpose, for all moneys due to him on account of dividends or special dividends payable on his said policy of life insurance.

VI.

That upon filing his said claim Plaintiff became entitled to receive a special dividend on his said policy in the amount of Two Hundred Thirty-three Dollars Seventy-five Cents ($233.75).

VII.

That on or about the 24th day of January, 1950,

plaintiff was notified by the said Administrator that plaintiff's claim for such dividends was approved in part and denied in part, that plaintiff's said claim was approved in the amount of Nine Dollars and Ninety-five Cents ($9.95), and denied in the amount of Two Hundred Twenty-one Dollars and Five Cents ($221.05); that on or about the 15th day of April, 1950, plaintiff was notified that his claim was approved in the additional amount of Two Dollars and Seventy-five Cents ($2.75), but that his claim was still denied as to Two Hundred Twenty-one Dollars and Five Cents ($221.05) thereof.

VIII.

That such denial of such portion of plaintiff's said claim was and is without legal cause or justification.

IX.

That there is a disagreement as to plaintiff's said claim within the meaning of Section 617 of said Act. (38 U.S.C.A. Section 817).

X.

That there is now due, owing and payable to plaintiff by defendant the sum of Two Hundred Twenty-one Dollars and Five Cents ($221.05), with interest thereon from January 24, 1950 at the legal rate.

Wherefore, plaintiff demands judgment against defendant in the sum of Two Hundred Twenty-one Dollars and Five Cents ($221.05), with interest

thereon from January 24, 1950, and his costs of suit.

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorneys for Plaintiff

Duly Verified.

[Endorsed]: Filed May 19, 1950.

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[Title of District Court and Cause.]

## ANSWER

Now comes the defendant and answering the complaint, denies and alleges as follows:

I.

That the complaint fails to state a claim against the defendant upon which relief can be granted.

II.

That the court is without jurisdiction to hear and determine the cause of action alleged herein since it is one for recovery of special dividends and not cognizable under Section 617 of the National Service Life Insurance Act of 1940, as amended (Section 817 of Title 38 U.S.C.A.).

III.

That there is no disagreement between the plaintiff and the Veterans Administration with respect to the special dividends payable under his policy

of National Service Life Insurance, which may be made the basis for the assumption by the court of jurisdiction of this suit under Section 817 of Title 38 U.S.C.A.

IV.

For answer to the allegations in the several paragraphs of the plaintiff's complaint, the defendant says:

I.

It is denied that this action is maintainable under Sections 801 to 818 of Title 38 U.S.C.A.

II.

The allegations of paragraph II are admitted.

III.

The allegations of paragraph III are admitted.

IV.

The allegations of paragraph IV are denied. As a further answer thereto, the defendant says that pursuant to the authorization contained in Section 602 (f) of the National Service Life Insurance Act, as amended (Section 802 (f) of Title 38 U.S.C.A.), the Administrator of Veterans Affairs, on January 16, 1950, officially declared and established the basis for computing the special dividends to be paid upon certain specified policies of National Service Life Insurance.

V.

The allegations of paragraph V are denied. Further answering, the defendant says that the plaintiff furnished to the Veterans Administration, on

the form provided therefor, all the information requested of him by the Veterans Administration as a basis for consideration of his entitlement to special dividends.

VI.

The allegations of paragraph VI are denied. Further answering, the defendant says that the Veterans Administration determined that the plaintiff's $10,000 policy of National Service Life Insurance was entitled to participate in the special dividends to the extent of $233.75, but that payment of the full amount of the said dividends could not lawfully be made because of the fact that the plaintiff was, at that time, indebted to the United States in the sum of $221.05, as will more fully hereinafter appear; and further answering, the defendant says that checks in the amount of $9.95 and $2.75, respectively, were mailed to the plaintiff representing the full amount of the dividends payable to him after deducting the amount of the indebtedness he owed the United States.

VII.

The allegations of paragraph VII are denied. Further answering paragraph VII of the complaint, defendant denies that the plaintiff was notified on January 24, 1950, or any other date, that plaintiff's claim for dividends was approved in part and denied in part, but states the facts to be that the plaintiff was, on or about January 24, 1950, forwarded a dividend statement showing that dividends in the amount of $231.00 had accrued under the plaintiff's National Service Life Insurance policy,

and that a charge had been entered against the amount payable as dividends in the sum of $221.05, leaving a net balance of $9.95 for which check was enclosed; that later, after ascertaining that the insured's policy had been reinstated in the amount of $5,000 and maintained in effect during the month of November, 1945, defendant forwarded to the plaintiff an additional statement, accompanied by check in the amount of $2.75, covering additional dividends payable; and further answering paragraph VII, defendant says that the sum of $221.05, which was shown on said statement as a charge against dividends payable under the insurance, arose in this manner: On March 5, 1941, two days subsequent to the plaintiff's entry into the service, he made application in writing to the Veterans Administration for the protection of policy No. 419814 issued upon the life of the plaintiff by the California-Western States Life Insurance Company December 6, 1940, in the face amount of $2500, as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86); that the Veterans Administration processed said application in all respects as provided by law and the regulations issued pursuant thereto by the Administrator of Veterans Affairs, and that the said application was approved and both the insurer and the plaintiff so notified on or about June 20, 1941.

That thereupon the defendant guaranteed the payment to the insurer, California-Western States Life Insurance Company, of such premiums as were not paid by the insured during the period of cover-

age which extended from the date of application until one year after termination of the plaintiff's military service; that on October 6, 1942, Public Law 732, 77th Congress, was approved by the President, and pursuant thereto the period of coverage and protection afforded commercial insurance policies under the Soldiers' and Sailors' Civil Relief Act of 1940 was extended to include the period terminating two years subsequent to discharge of an insured from service.

That upon learning of the separation of the plaintiff from military service, as of October 20, 1945, the Veterans Administration on November 14, 1946, dispatched to him a letter (V. A. Form F.L. 9-63), photostatic copy of which is incorporated herein by reference, wherein the insured's right to terminate the protection being afforded his insurance was made clear; that he was further advised in the said letter that any premiums not paid by him covering the period of protection would, upon an accounting, become an indebtedness which he would owe the insurance company, subject to any credit allowed by the company for the then cash value of the policy; that the Government guaranteed the payment of this amount to the insurance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account"; that on October 20, 1947, the Veterans Administration terminated the protection, as provided by law, and thereupon the California-Western States Life Insurance Company

rendered its report showing that premiums had accrued during the period of coverage in the amount of $343.93, no part of which had been paid, and that after crediting the cash surrender value of the policy ($82.88) an unpaid balance of $261.05 remained which was subject to payment by the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of $261.05, in payment of which United States Treasury Check No. 59 311 294, dated January 2, 1948, was dispatched.

That the plaintiff was duly notified of the said award and payment to the insurer and that the amount paid by the United States represented a debt due by him to the Government; that on or about March 11, 1948, the insured advised the Veterans Administration that he was not in a position at that time to make payment and requested information as to what mode of payment he might avail himself of "in order to take care of this obligation"; that after further exchange of correspondence the insured was advised on August 10, 1948, that he could discharge this obligation by initially making payments of $10.00 per month, the payments to be increased as his financial condition improved "in order to liquidate the entire indebtedness within the allotted time of approximately one year"; that the plaintiff accepted said plan of repayment and transmitted pursuant thereto the sum of $10.00 covering payment for the month of August, 1948, $10.00 covering payment for the month

of September, 1948, and on December 28, 1948, he transmitted the sum of $20.00, covering November and December, 1948, payments; that plaintiff made no further payments thereafter, and on February 17, 1950, the insured was notified that a deduction in the amount of $221.05 had been made from his National Service Life Insurance dividends and that his indebtedness to the United States because of protection afforded his commercial life insurance policy under the Soldiers' and Sailors' Civil Relief Act was thereby liquidated.

Further answering, the defendant says that all of its actions aforesaid, and particularly the application of the sum of $221.05 payable to the plaintiff as special dividends under his National Service Life Insurance policy to the plaintiff's indebtedness to the United States in like amount for the protection afforded, at plaintiff's request, under the Soldiers' and Sailors' Civil Relief Act of 1940, and amendments thereto, was fully authorized by law, and that it owes the plaintiff nothing.

VIII.

The allegations of paragraph VIII are denied.

IX.

The allegations of paragraph IX are denied.

X.

The allegations of paragraph X are denied. In further answer thereto, the defendant says that it has fully discharged its obligation to the plaintiff with respect to the special dividends payable under

his policy of National Service Life Insurance and has fully paid to him all dividends to which he was lawfully entitled.

Wherefore, having fully answered, the defendant prays that the plaintiff take nothing by this action and that judgment be entered for the defendant and against the plaintiff with costs, and for such other and further relief as may to the court seem just and proper.

/s/ FRANK J. HENNESSY,
/s/ By R. B. McMILLAN,
Assistant United States Attorney, Attorney for Defendant, United States of America.

[Endorsed]: Filed January 8, 1951.

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[Title of District Court and Cause.]

## WRITTEN INTERROGATORY SUBMITTED UNDER RULE 33, RULES OF CIVIL PROCEDURE, AND ANSWERS THERETO

To United States of America, Defendant, and to Frank J. Hennessy, United States Attorney, Its Attorney:

In accordance with Rule 33 of the Rules of Civil Procedure, you are hereby requested to furnish answers to the following interrogatories:

### Interrogatory No. 1

(a) Did the United States Veterans' Administration, at any time prior to October 6, 1942, issue any official statement that persons whose policies of

private life insurance had been placed under the protection of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress) prior to October 6, 1942, would be or become liable to the Government in the event the United States was required to pay moneys to the insurer on account of the guarantee of premiums by the United States under such Act?

(b) If any such statements were made, please advise where and to whom such statements were made, and what efforts were made to circulate such statements to interested persons, and particularly to persons who had placed their policies under the protection of Article IV. In addition, please furnish copies of all such statements.

Answer to Interrogatory No. 1

(a) No, the Veterans Administration did not issue any categorical official statement prior to October 6, 1942, that persons whose policies of private life insurance had been placed under the protection of Article IV, Soldiers' and Sailors' Civil Relief Act of 1940, would be or become liable to the Government in the event the United States was required to make payment to insurers on account of the guaranty of premiums by the United States under such Act.

(b) Answer unnecessary. See 1(a) above.

Interrogatory No. 2

When, where and under what circumstances did the Veterans' Administration first publicly and of-

ficially state that it considered that such persons would become indebted to the United States if the United States was required to make good on its guarantee of premiums on insurance which such persons had placed under the protection of said Act?

Answer to Interrogatory No. 2

So far as can be ascertained by inquiry of officials having knowledge of the facts, the first public and official statements made with regard to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 were probably made at hearings conducted by the Congress in connection with amendments thereto, later passed as a part of Public Law 732, 77th Congress, on October 6, 1942.

Interrogatory No. 3

(a) What circulation was given to Decision No. 513 (of the Administrator of Veterans' Affairs) dated March 1, 1943?

(b) What efforts, if any, were made to advise persons who, prior to October 6, 1942, had placed policies of life insurance under the protection of said Act of the contents of said Administrator's Decision?

(c) What publicity if any was given to the issuance of said Administrator's Decision?

Answer to Interrogatory No. 3

(a) Administrator's Decision No. 513 was given the usual distribution prescribed for such decisions, viz., to all Veterans Administration Regional Offices,

hospitals, facilities and other installations where they will serve a useful purpose. In addition, they are available in bound form from the Superintendent of Documents, United States Government Printing Office.

(b) As soon as the Veterans Administration was advised by a service department of the separation or discharge of a person who had, prior to October 6, 1942, placed his private insurance under the protection of said Act, he was fully advised, among other things, as was the plaintiff in this case on November 14, 1946, that all premiums becoming due and not paid during the period of protection constituted a loan against the policy, and that on this indebtedness he was to pay interest at the policy loan rate of the company; that his policy might be left under the protection of the Act for a maximum period of two years from discharge (this was pursuant to Article IV as amended by the Act of October 6, 1942) during which time he might repay any part of his loan as well as any premiums due and that at the end of this two-year period his protection would cease and an accounting would be made; that it was his privilege to have the policy withdrawn from protection then or at any future time within the two-year period, and that upon such accounting he would owe the insurance company the difference between the premium loan and the then cash value of the policy. He was also advised at such time that the Government guaranteed this difference to the insurance company, and that any part of it left unpaid would be paid by the United

(Civil Relief) Forms No. 380 and 385 were sent to the armed forces, and identical letters were written by the Administrator to the Secretary of War and to the Secretary of the Navy in effectuation of Congressional mandates contained in the basic Act (P L 861-76 C.). A copy of Veterans Administration Insurance (Civil Relief) Form No. 380 pertinent to this case is contained in Veterans Administration files now in custody of the United States Attorney. Copies of Form 385 and of letter of November 4, 1940, to the Secretary of War are attached.

Interrogatory No. 6

Did the Veterans' Administration or any official thereof charged with the administration of the benefits of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, prior to October 6, 1942, make any statements to the press concerning the rights of the Government and the obligations of servicemen who might take advantage of said Article IV in the event such servicemen did not pay premiums guaranteed by the Government? If so, please furnish copies of all such statements.

Answer to Interrogatory No. 6

Since press releases are not considered permanent records, no provision is made for their retention over a period of time such as here involved, and there is no record in the Veterans Administration of any statements to the press concerning the rights of the Government and the obligations of servicemen under Article IV of Public 861, 76th Congress.

Interrogatory No. 7

Did Mr. Harold W. Breining, then Assistant Administrator of Veterans' Affairs in charge of matters relating to insurance, make the statements attributed to him in the January 31, 1941, issue of "The Eastern Underwriter" (published at New York City, New York) and if so, did he not make such statements in view of their probable publication in such weekly insurance newspaper?

Answer to Interrogatory No. 7

The statement attributed to Mr. Harold W. Breining by the Eastern Underwriter was furnished by him at the request of the Managing Editor of that publication for comment on a news item concerning the Act. Mr. Breining, being a layman, necessarily confined his comments to the provisions of the original Act, and did not undertake to define the legal responsibilities of the parties thereunder.

Interrogatory No. 8

(a) Did the Veterans' Administration receive a letter dated February 18, 1941, from one Ray S. Peters, Manager of the Denver, Colorado office of the Jefferson Standard Life Insurance Company, which letter was directed to one H. L. McCoy, Director of Insurance, Veterans' Administration, Washington, D. C., and which letter related to the rights and obligations of a serviceman whose private insurance had been put under the protection of Article IV of said Act? If so, please furnish a copy of said letter.

(b) Did Mr. McCoy reply to said letter under

date of February 21, 1941, (file reference, FBE)? If so, please furnish a copy of such reply.

(c) Was the position of the Veterans' Administration relative to the possible indebtedness of the serviceman to the Government under the circumstances set forth in such correspondence then different from or contrary to that indicated in Mr. McCoy's said letter of February 21, 1941? If so, what was the position of the Veterans' Administration on the subject matter at that time?

Answer to Interrogatory No. 8

(a) Yes, the Veterans Administration received a letter under date of February 18, 1941, from one Ray S. Peters, then Manager of the Denver, Colorado Office of the Jefferson Standard Life Insurance Company, but the defendant is not at liberty to divulge the nature of such correspondence, even if it were pertinent to the issues in this case.

(b) Yes, Mr. McCoy apparently replied to Mr. Peters' letter, but the defendant is not at liberty to disclose the reply made, which is, of course, irrelevant to this case.

(c) No, the Veterans Administration has always been aware of the fact that Public 861, 76th Congress, did not in express terms provide that an applicant for protection would be indebted to the United States to the extent of any payments made by it on his account and pursuant to its terms; and it has always been the consistent position of the Veterans Administration and all responsible officials [illegible] that it was not the intention of Congress in

enacting Public 861, 76th Congress, to provide free private insurance for servicemen, but that on the other hand, it was the intention of Congress to provide assistanee to a serviceman in meeting obligations assumed during civilian life and prior to entry into the service where his entry into the service might render it difficult, if not impossible, to carry.

Interrogatory No. 9

What individual or individuals in the Veterans' Administration were responsible for the preparation of Veterans' Administration Insurance Forms 380, 381, 385 and 394 under the original Act of 1940?

Answer to Interrogatory No. 9

The Assistant Administrator for Insurance had immediate responsibility for the preparation of necessary forms for implementing Public 861, 76th Congress, to the Administrator of Veterans Affairs, who had ultimate responsibility for the preparation of such forms.

Interrogatory No. 10

(a) Did such person or persons responsible for the preparation of such forms understand at the time such forms were prepared that it was the position of the Veterans' Administration that a serviceman applying for protection under the Act who later allowed his policy to lapse would become indebted to the Government in the amount of moneys paid out by the Government to the insurer?

(b) If it was the position of the Veterans' Administration at that time that such servicemen

would become so indebted, why was this position not expressed or explained in such forms?

Answer to Interrogatory No. 10

(a) Several persons participated in the preparation of forms referred to in Interrogatory No. 9, supra, but the understanding which each had with respect to the existence of an indebtedness on the part of a serviceman on whose account monies were paid out by the Government to an insurer can not be ascertained at this time, nor are such understandings considered to be pertinent to this case.

(b) In order to put into effect the provisions of Public 861, 76th Congress, it was necessary to hastily prepare the necessary forms and to take other measures essential for the administration of said Act. For this reason it was considered advisable to follow the language of the basic Act until its provisions had been clarified by amendatory legislation or judicial construction.

Interrogatory No. 11

(a) When Mr. Harold W. Breining made the statement attributed to him on lines 8 to 11 inclusive of page 9 of Decision No. 742 of the Administrator of Veterans' Affairs, dated April 1, 1947, to what did he refer when he was talking about "present construction of existing law"?

(b) What was the Veterans' Administration's "present construction of existing law" at that time relative to servicemen's indebtedness to the Government?

Answer to Interrogatory No. 14

(a) The first sentence quoted on lines 8 to 11, page 9, of Decision No. 742 of the Administrator of Veterans Affairs is correct. The second sentence obviously does not quote Mr. Breining correctly, since it contradicts the first sentence. The fact that the statement made by Mr. Breining was clearly understood by the members of the Committee is evidenced by the subsequent statement by Mr. Sparkman, also appearing on page 9, to the following effect:

"But the gentlemen should understand this, that the soldier is not relieved from the liability of paying premiums. The Government simply guarantees that they will be paid. * * *"

(b) The "construction of existing law" by the Veterans Administration was always as indicated in answer to Interrogatory No. 8(c), supra.

* * * * *

Interrogatory No. 15

Please furnish a copy of the letter written to the President of the Senate of the United States on April 16, 1941, by Veterans' Administrator, Frank T. Hines, relative to proposed amendments to the Soldiers' and Sailors' Civil Relief Act of 1940.

Answer to Interrogatory No. 15

A copy of the letter written to the President of the Senate on April 16, 1941, by Veterans Administrator Frank T. Hines, relative to proposed amendments to the Soldiers' and Sailors' Civil Relief Act

of 1940, is reproduced in Senate Report No. 716 appended hereto as an exhibit.

Interrogatory No. 16

Please furnish a copy of the proposed amendments to the Soldiers' and Sailors' Civil Relief Act of 1940 which were prepared by the Veterans' Administration in 1941 (reference to such proposed amendments is made on page 6 of said Administrator's Decision No. 742).

Answer to Interrogatory No. 16

Amendments proposed by the Veterans Administration to Article IV of Public 861, 76th Congress, are set forth in Senate Report No. 716, referred to in answer to Interrogatory No. 15, supra.

Interrogatory No. 17

On page 5 of said Administrator's Decision No. 742 reference is made to a list of 14 cases in which the Government made collections from veterans on account of moneys paid out by the Government under the Act of March 8, 1918 (Public No. 103, 65th Congress). Please furnish us with a copy of such list, together with the last known addresses of such 14 veterans.

Answer to Interrogatory No. 17

The names of the 14 veterans from whom the Government made collections, referred to one page 5 of Administrator's Decision No. 742, are not available, and cannot reasonably be obtained within the time required to answer these interrogatories.

(Appropriate objection should be made to full answer.)

Interrogatory No. 13

(a) Were the payments made to the Government in such 14 cases voluntary on the part of the veterans, or were they the result of collection efforts on the part of the Government?

(b) If they were the result of collection efforts, please advise of the steps taken by the Government to effectuate such collections.

(c) Were any of said collections made by way of offset or deduction from benefits payable to such veterans under any law relating to veterans?

Answer to Interrogatory No. 18

(a) The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(b) The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(c) The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(Appropriate objection should be made to full answer.)

Interrogatory No. 19

Did the Government make any attempts to obtain reimbursement for amounts collected under the 1918

Act from any persons other than the 14 veterans mentioned in said Administrator's Decision No. 742? If so, what was the nature and extent of such efforts?

Answer to Interrogatory No. 19

The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(Appropriate objection should be made to full answer.)

Interrogatory No. 20

Did the Veterans' Administration or any representative thereof advise the Congress or any committee of the House or Senate at the time the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, was under consideration that such collections had been made under the 1918 Act and that similar collections would be attempted under the 1940 Act?

Answer to Interrogatory No. 20

So far as can be ascertained, no hearings were held with respect to Public 861, 76th Congress, and no representative of the Veterans Administration appeared before Congress with reference thereto prior to its passage on October 17, 1940.

* * * * *

Interrogatory No. 24

(a) Did the Veterans' Administration or any official thereof suggest the amendment of Article IV of the Soldiers' and Sailors' Civil Relief Act to include the provision relative to offset or deduction

which was ultimately included in Section 406 of the Act of October 6, 1942, (Public No. 732, 77th Congress)?

(b) What was the purpose of such amendment so far as it related to the Government's right to collect by way of offset or deduction?

(c) Was the purpose or effect of such amendment so far as it related to the offset question discussed by or with any Committee of the House or Senate or in the House or Senate when the amendment was pending before Congress? If so, please furnish copies of any report of such discussion or furnish citations to the Congressional Record.

Answer to Interrogatory No. 24

(a) The amendments proposed by the Veterans Administration are set forth in the Senate Report No. 716 referred to in answer to Interrogatories 15 and 16, supra.

(b) The purpose of the amendment proposed by the Veterans Administration to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 was to state in simple language which could be understood by anyone the obligation of the serviceman to reimburse the Government for amounts expended on his account and at his request in payment of premiums which he elected not to pay and which were guaranteed by the Government. This amendment was considered necessary in order to clarify the obligation of the serviceman which was clearly implied in Article IV as originally enacted, but was not expressly stated.

(c) The Committee hearings held in connection with the amendment of October 6, 1942, speak for themselves and are equally available to the plaintiff.

* * * * *

[Printer's Note: Interrogatories signed by Lawrence A Schei, of White, Harber & Schei, Attorneys for Plaintiff.]

[Printer's Note: Answers to Interrogatories signed by R. B. McMillan, Asst. U. S. Atty., for Chauncey Tramutolo, U. S. Attorney.]

[Endorsed]: Interrogatories Filed Feb. 12, 1951.

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In the District Court of the United States, Northern District of California, Northern Division

No. 6326

PAUL E. PLESHA, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

MYRON L. KERN, Plaintiff in Intervention,

vs.

UNITED STATES OF AMERICA, Defendant.

## COMPLAINT IN INTERVENTION

Intervener alleges:

I.

That this action arises under the Act of October 8, 1940, sometimes known as the National Service Life Insurance Act of 1940, 54 Stat. 1008-1014,

Title 38, U.S.C.A., Sections 801 to 818, as hereinafter more fully appears.

II.

That intervener resides in the City and County of San Francisco, State of California, which is within The Northern District of California.

III.

That on or about the 1st day of February, 1942, defendant issued to intervener a policy of life insurance under and in accordance with said National Service Life Insurance Act, such policy being No. N-938 477 and being in the face amount of Ten Thousand Dollars ($10,000.00); that said policy has been maintained in full force and effect at all times since February 1, 1942, to and including the date hereof by full payment of all premiums due thereon.

IV.

That in accordance with Section 602(f) of said Act (38 U.S.C.A. Section 802f) and Regulations issued pursuant thereto by the Administrator of Veterans' Affairs, a special dividend was declared by said Administrator to be paid from the surplus in the National Service Life Insurance Fund to each holder of a policy issued under said Act prior to the year 1948 who should file claim for such dividend with said Administrator.

V.

That on or about the 12th day of September,

1949, intervener filed with said Administrator his claim, on the form provided by said Administrator for such purpose, for all moneys due to him on account of dividends or special dividends payable on his said policy of life insurance.

VI.

That upon filing his said claim Intervener became entitled to receive a special dividend on his said policy in the amount of Three Hundred Ninety-six Dollars ($396.00).

VII.

That on or about the 7th day of April, 1950, intervener was notified by the said Administrator that intervener's claim for such dividends was approved in part and denied in part, that intervener's said claim was approved in the amount of Ninety-three Dollars Ninety-four Cents ($93.94) and denied in the amount of Three Hundred Two Dollars Six Cents ($302.06).

VIII.

That such denial of such portion of intervener's said claim was and is without legal cause or justification.

IX.

That there is a disagreement as to intervener's said claim within the meaning of Section 617 of said Act. (38 U.S.C.A. Section 817.)

X.

That there is now due, owing and payable to intervener by defendant the sum of Three Hundred

Two Dollars Six Cents ($302.06), with interest thereon from April 7, 1950, at the legal rate.

Wherefore, intervener demands judgment against defendant in the sum of Three Hundred Two Dollars Six Cents ($302.06), with interest thereon from April 7, 1950, and his costs of suit.

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorneys for Intervener

Duly Verified.

[Endorsed]: Filed February 19, 1951.

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In the District Court of the United States, Northern District of California, Northern Division

No. 6326

PAUL E. PLESHA, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

JAMES E. MABBUTT, Plaintiff in Intervention,

vs.

UNITED STATES OF AMERICA, Defendant.

## COMPLAINT IN INTERVENTION

Intervener alleges:

I.

That this action arises under the Act of October 8, 1940, sometimes known as the National Service Life Insurance Act of 1940, 54 Stat. 1008-1014,

Title 38, U.S.C.A., Sections 801 to 818, as hereinafter more fully appears.

II.

That intervener resides in the City of Sacramento, County of Sacramento, State of California, which is within the Northern Division of the Northern District of California.

III.

That on or about the 6th day of October, 1942, defendant issued to intervener a policy of life insurance under and in accordance with said National Service Life Insurance Act, such policy being No. N 6163632 and being in the face amount of Ten Thousand Dollars ($10,000.00); that said policy was maintained in full force and effect by payment of the premiums thereon to and including the 6th day of February, 1948; that effective February 6, 1948, said policy was converted to a 30-pay life insurance policy No. V 12071952; that said policy as converted has been maintained in full force and effect at all times since February 6, 1948.

IV.

That in accordance with Section 602(f) of said Act (38 U.S.C.A. Section 802f) and Regulations issued pursuant thereto by the Administrator of Veterans' Affairs, a special dividend was declared by said Administrator to be paid from the surplus in the National Service Life Insurance Fund to each holder of a policy issued under said Act prior

to the year 1948 who should file claim for such dividend with said Administrator.

V.

That on or about the 1st day of September, 1949, intervener filed with said Administrator his claim, on the form provided by said Administrator for such purpose, for all moneys due to him on account of dividends or special dividends payable on his said policy of life insurance.

VI.

That upon filing his said claim Intervener became entitled to receive a special dividend on his said policy in the amount of Three Hundred Fifty-two Dollars ($352.00).

VII.

That on or about the 26th day of May, 1950, intervener was notified by the said Administrator that intervener's claim for such dividends was approved in part and denied in part, that intervener's said claim was approved in the amount of One Hundred Forty-six Dollars Twenty-five Cents ($146.25) and denied in the amount of Two Hundred Five Dollars Seventy-five Cents ($205.75).

VIII.

That such denial of such portion of intervener's said claim was and is without legal cause or justification.

IX.

That there is a disagreement as to intervener's

said claim within the meaning of Section 617 of said Act. (38 U.S.C.A. Section 817.)

X.

That there is now due, owing and payable to intervener by defendant the sum of Two Hundred Five Dollars Seventy-five Cents ($205.75), with interest thereon from May 26, 1950, at the legal rate.

Wherefore, intervener demands judgment against defendant in the sum of Two Hundred Five Dollars Seventy-five Cents ($205.75), with interest thereon from May 26, 1950, and his costs of suit.

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorneys for Intervener

Duly Verified.

[Endorsed]: Filed February 19, 1951.

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[Title of District Court and Cause.]

## REQUEST FOR ADMISSIONS

Plaintiff, Paul E. Plesha, hereby requests defendant, United States of America, within thirty (30) days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

That each of the following statements is true:

1. That Paul E. Plesha on March 5, 1941, com-

pleted and signed an application on Veterans' Administration insurance Form 380 to have placed under the protection of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 that certain life insurance policy issued on the life of Paul E. Plesha by the California Western States Life Insurance Company on December 6, 1940, Policy No. 419814.

2. That under date of March 12, 1941, the insurer which had issued the aforementioned policy of life insurance to plaintiff Paul E. Plesha, completed, signed and dispatched to the Veterans' Administration a "Report by Insurer", Veterans' Administration Insurance Form 381, which form related to said policy and to plaintiff's said application.

3. That under date of June 20, 1941, the Veterans' Administration notified Paul E. Plesha and said California Western States Life Insurance Company on Veterans' Administration Insurance Form 394-Rev. Mar. 41 that plaintiff's said application for such protection of his said policy had been approved.

4. That during the period March 6, 1941 to March 10, 1948 no additional applications, agreements, letters or other communications were made or sent by plaintiff to the Veterans' Administration relative to the protection of his said policy of life insurance under said Act.

5. That no additional notices, letters or other communications were sent by the Veterans' Administration to Paul E. Plesha relative to the protection

of said insurance under said Act during the period from June 21, 1941, to October 19, 1945.

6. That plaintiff's said application dated March 5, 1941, together with the said Report of Insurer dated March 12, 1941, said Notice of Approval dated June 20, 1941, and the original provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 —(Public No. 861, 76th Congress) constituted the entire agreement and contract between plaintiff and the United States concerning the protection of his said insurance under the said Act.

7. That in consideration of the protection afforded said insurance policy by the United States plaintiff consented and agreed "that the United States shall be protected in the amount of any premiums and interest guaranteed on the above-numbered policy in the event of its maturity as a claim, or out of the cash surrender of the policy, at the expiration of the period of the protection under the Act".

8. That plaintiff did not agree, orally or in writing, on or before January 2, 1948, that he would reimburse the United States in whole or in part for any moneys which the United States might be required to pay on account of its guarantee of premiums and interest on said policy of life insurance.

9. That plaintiff was not informed by the Veterans' Administration or any representative thereof prior to October 20, 1945, that the United States claimed or would claim reimbursement for any amount or amounts paid by it to said insurer on account of said policy of life insurance.

10. That the special dividend in the amount of Two Hundred Thirty-three Dollars Seventy-five Cents ($233.75), which was payable on plaintiff's policy of National Service Life Insurance as stated in paragraphs VI and VII of defendant's Answer herein was an "insurance benefit" within the meaning of Section 445 of Title 38 United States Code Annotated.

11. That when plaintiff made application for such special dividend on his National Service Life Insurance as alleged in paragraph V of defendant's Answer herein, he became entitled, as a matter of right, to receive such dividend at such time and in such amount as might be determined in accordance with existing law, and rules and regulations of the Administrator of Veterans' Affairs.

12. That the Veterans' Administration could not, consistently with law, have refused to pay such special dividend to Paul E. Plesha while paying dividends computed on the same basis to other owners of National Service Life Insurance policies.

13. That the deduction of Two Hundred Twenty-one Dollars Five Cents ($221.05) made by the United States from such special dividend to which plaintiff became entitled was a denial pro tanto of plaintiff's request that he be paid such special dividend.

14. That such deduction was made after it had been determined that Paul E. Plesha was entitled to a special dividend in the amount of Two Hundred Thirty-one Dollars ($231.00) in accordance with applicable law, rules and regulations.

15. That prior to the time when plaintiff made application for such special dividend and prior to September 1, 1948, the Veterans' Administration had declared, by means of nation-wide publicity, that it intended to pay a special dividend to all holders of certain specified policies of Service Life Insurance, including plaintiff's policy of National Service Life Insurance.

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorney for Plaintiff

Acknowledgment of Service attached.

[Endorsed]: Filed February 19, 1951.

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[Title of District Court and Cause.]

## REPLY TO REQUEST FOR ADMISSION OF FACTS

State of California,
County of San Francisco—ss.

The United States of America, defendant in the above-entitled action, makes the following statement in response to the Request for Admissions served upon it by the plaintiff on February 12, 1951.

1. Defendant admits the truth of the matters set forth in Paragraphs 1, 2, 3, 4, 5; 7 and 9 of the aforesaid request.

2. Defendant denies the truth of the matters set

forth in Paragraphs 6, 11, 12, 13, 14 and 15 of the aforesaid request.

3. Defendant neither admits nor denies the truth of the matters set forth in Paragraphs 8 and 10 of the aforesaid request for the reason that they call for expressions in the nature of conclusions of law which are for ultimate determination by the court.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney
/s/ By R. B. McMILLAN,
(Jurat) Asst. United States Attorney

Acknowledgment of Service attached.

[Endorsed]: Filed October 19, 1951.

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[Title of District Court and Cause.]

## REPLY TO REQUEST FOR ADMISSION OF FACTS

State of California,
County of San Francisco—ss.

Now comes the defendant, the United States of America, and in response to plaintiff's Request for Additional Admissions, and subject to all pertinent objections which may be interposed upon the trial, says:

In answer to Request No. 16(a)—

It is true that the plaintiff took all necessary steps to procure payment by the Veterans Administration of the Special Dividend, payment of which

commenced on to-wit, January 16, 1950, and except for his indebtedness to the United States on account of premiums advanced by it as set forth in defendant's Answer, would have been entitled, insofar as the Veterans Administration is concerned, to receive the sum of $221.05, in addition to $12.70, instead of having the former amount paid by applying it to his alleged indebtedness to the United States.

In answer to Request for Admission 16(b)—

It is true that, except for his indebtedness to the United States arising under the circumstances set forth in defendant's Answer, the plaintiff would have been entitled to receive a total of $233.75 on account of such Special Dividend. In other words, National Service Life Insurance policies which had been in effect for the same length of time as plaintiff's, and which were taken out at the same insurance age on the Five-Year Level Premium Term plan, would have participated in the surplus available for distribution as special dividends to the extent of $233.75, and the holders thereof would, if living on the date check in payment thereof was issued, have been entitled to receive such check in the absence of legal basis for refusing or withholding payment to the payee.

In answer to Request for Admission 17(a)—

It is admitted that plaintiff, prior to the filing of this suit, and on or about September 1, 1949, requested the Veterans Administration to make payment of Special Dividend on account of his National Service Life Insurance policy, which request of plaintiff the defendant complied with by apply-

ing the amount of $221.05 to plaintiff's indebtedness to the Government, and by forwarding to the insured one check in the amount of $9.95, and one check in the amount of $2.75, as set forth in defendant's Answer.

In answer to Request for Admission 17(b)—

No, it is not true that the defendant, through the Veterans Administration and the Administrator of Veterans Affairs, has failed and refused to pay plaintiff more than the sum of $12.70 on account of Special Dividend mentioned in defendant's Answer, for, as stated in Admission 17(a) above, the Veterans Administration paid said Dividend in full by applying $221.05 thereof to his indebtedness to the United States, above referred to, and by issuing United States Treasury checks aggregating the sum of $12.70, which were forwarded to the plaintiff.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney

[Endorsed]: Filed October 19, 1951.

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[Title of District Court and Cause.]

## REQUEST FOR ADDITIONAL ADMISSIONS

Plaintiff, Paul E. Plesha, hereby requests defendant, United States of America, within thirty (30) days after service of this request to make the following additional admissions for the purpose of this action only and subject to all pertinent objec-

tions to admissibility which may be interposed at the trial:

16. Referring to the previous requests for admissions numbered 11 and 12 and the denials thereof:

(a) Is it not true that the plaintiff, when he furnished the information as alleged in paragraph 5 of defendant's answer, took all steps necessary so that, except for the alleged indebtedness and charge mentioned in paragraphs 6 and 7 of the answer herein, he would have received, under the applicable statutes and regulations, the sum of $233.75 as dividends on his National Service Life Insurance policy referred to in the complaint?

(b) Is it not true that, except for the alleged indebtedness and charge mentioned in paragraphs 6 and 7 of defendant's answer herein, plaintiff, Paul E. Plesha, was entitled as a matter of right to receive the sum of $233.75 on or about January 24, 1950?

17. Referring to request for admissions numbered 13 and 14, and the denials thereof:

(a) Is it not true that plaintiff, prior to the filing of the complaint herein, and on or about September 1, 1949, requested defendant, in writing, through the Veterans Administration and the Administrator of Veterans' Affairs, to pay plaintiff the full amount of any special dividend to which he might be entitled?

(b) Is it not true that the defendant, through the Veterans Administration and the Administrator of Veterans' Affairs, has failed and refused to pay plaintiff more than the sum of $12.70 on account

of the special dividend mentioned in paragraph IV of defendant's answer herein?

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorney for Plaintiff

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 8, 1951.

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[Title of District Court and Cause.]

## ADDITIONAL WRITTEN INTERROGATORIES AND ANSWERS THERETO

To United States of America, Defendant, and to Chauncey Tramutolo, United States Attorney, Its Attorney:

### Interrogatory No. 26

(a) Referring to the answer to our previous interrogatory No. 2, what person or persons made the "first public and official statements made with regard to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940" referred to in said answer?

(b) On what date or dates were the statements referred to in said answer made?

(c) What was the content or text of the statement or statements so made?

### Answer to Interrogatory No. 26

(a) At the hearings referred to in answer to Interrogatory No. 2, Mr. H. W. Breining, Assistant

Administrator for Insurance, appeared as a witness before the Committee on Military Affairs. However, even though his statements, in certain respects, related to the Soldiers' and Sailors' Civil Relief Act of 1940, they could in no manner be pertinent to the issues involved in this suit. It should be pointed out that it cannot be ascertained what the plaintiff regards as a "public and official statement with regard to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940", but it was pointed out in answer to Interrogatory No. 15 that the Administrator wrote to the President of the Senate on April 16, 1941, (and to the Speaker of the House) relative to the proposed amendments as to which Mr. Breining later testified in the hearings. Even as late as March 1, 1943, no case had been submitted to the Veterans Administration which required an official determination of the liability of a veteran for premiums advanced under the provisions of the Act, and this question was not presented to the Veterans Administration in such a manner as to require an official legal construction of it until shortly before March 1, 1943, on which date Administrator's Decision 513, which was based on opinion of the Solicitor's office, was approved by the Administrator and published as the official position of the Veterans Administration. This decision constituted the first official expression by the Administrator which was released to the public and given general distribution. The conclusions therein expressed were reconsidered and affirmed in Administrator's Decision 742, April 1, 1947.

(b) The letter of the Administrator, referred to above, was dated April 16, 1941; Mr. Breining's statement before the Committee was made on May 25, 1942; and the first official pronouncement on the primary question was Administrator's Decision 513, March 1, 1943.

(c) Mr. Breining's remarks as a witness before the Congressional Committee which was considering an amendment to Public Law 861, 77th Congress, are not relevant to the issues involved in this suit. However, his remarks are a matter of public record.

Interrogatory No. 27

Referring to the answer to our previous interrogatory No. 7, we attach a photostat copy of a portion of the Eastern Underwriter dated January 31, 1941, and ask you if this is a true and correct reproduction of the statement made by Mr. Breining to said Eastern Underwriter.

Answer to Interrogatory No. 27

The attached photostat of the Eastern Underwriter appears to be an accurate reproduction of the statement of Mr. H. W. Breining. It will be noted from the article that the paper asked Mr. Breining what was the attitude "with reference to insurance written under such circumstances". Mr. Breining's reply to this question was that if a man's application met the requirements of the Act, he was eligible for protection. His further statement, "There is no provision in the Act at this time for collecting from the insured the amount that the

premium with interest may exceed the cash surrender value at the time of termination" (emphasis added), clearly indicates that he was unwilling to extend his comment beyond the express terms of the Act itself, and he did not undertake to state the intent of Congress as manifested by the entire Act. In other words, this was not an official interpretation.

Interrogatory No. 28

Referring to interrogatory No. 8, we attach a photostat copy of what purports to be a carbon copy of a letter addressed to the Veterans Administration by Ray S. Peters, and we also attach a photostat copy of what purports to be an answer to Mr. Peters' letter, which answering letter is on stationery of the Veterans Administration and is signed by one H. S. McCoy, and we ask you if these are true and correct copies of the correspondence referred to in our previous interrogatory No. 8 and in your answer to such interrogatory.

Answer to Interrogatory No. 28

Yes, the photostats and correspondence between Mr. H. L. McCoy and the Jefferson Standard Life Insurance Company appear to be accurate reproductions, but their relevancy to the cases here involved is not apparent since the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 speak for themselves, and a statement or the expression of an opinion as to what the Act does or does not contain by an official of the Government in a hypothetical case cannot be construed as re-

stricting the rights of the Government under the Act itself.

Interrogatory No. 29

We attach a photostat copy of what purports to be a carbon copy of a telegram addressed to the Veterans Administration by one Stewart C. Henig and we also attach a photostat copy of what purports to be the original of a reply to Mr. Henig's said telegram and we ask you if the Veterans Administration received a telegram on or about November 22, 1940, in words and figures as shown on the attached photostat of a telegram signed "Stewart C. Henig" and we further ask you if H. S. McCoy, then Director of Insurance for the Veterans Administration did not reply to Mr. Henig's said telegram in words and figures as shown on the attached photostat of the telegram signed "McCoy Insurance".

Answer to Interrogatory No. 29

Yes, the attached photostats of purported exchange of telegrams between Stewart C. Henig and Mr. McCoy appear to be accurate copies; however, their relevancy to this case is not apparent. The statement of Mr. McCoy that "No provision is made in the Act for collecting from insured the amount paid by Government to insurer" was obviously not a direct answer to the question asked in the telegram, to-wit, "If his policy lapses is he liable for the difference between the cash value and premiums advanced to the Government or insurance company?" (emphasis added) and it is apparent that

Mr. McCoy deliberately confined his reply to the express terms of the Act itself. In this case, also, the question was hypothetical.

Interrogatory No. 30

Referring to the answer to our previous interrogatory No. 9, what is the name of the person referred to in such answer as "The Assistant Administrator for Insurance"?

Answer to Interrogatory No. 30

Mr. H. W. Breining was the Assistant Administrator for Insurance referred to in defendant's Answer to Interrogatory No. 9.

* * * * *

Interrogatory No. 32

Referring to the denial of our previous Request for Admissions No. 15, is it not true that prior to September 1, 1949, the Veterans Administration had publicly announced that persons who had taken out policies of National Service Life Insurance on or after October 8, 1940, and before December 31, 1947, and who had kept such insurance in force for at least three months could make application for a special dividend on such insurance?

Answer to Interrogatory No. 32

Yes, on June 20, 1949, news item, copy attached, was released for publication.

Veterans Administration Information Service
EX. 4210 Br. 2741

(Copy) Washington 25, D. C.

Immediate Release—Monday, June 20, 1949.

Payment of a $2,800,000,000 (billion) special National Service Life Insurance dividend on approximately 20,000,000 (million) policies today was authorized by Carl R. Gray, Jr., Administrator of Veterans Affairs.

About 16,000,000 veterans who took out insurance during World War II will be eligible to receive the dividend. Amounts individual veterans will receive are not yet known, as individual calculations have not been completed.

Mr. Gray said that he "hoped distribution of the checks could be started sometime in January, 1950, and be substantially completed during the first half of 1950".

Generally, every veteran who took out NSLI and kept it in force for three months or more will be eligible for the dividend, Mr. Gray indicated. In cases where policyholders have died, the beneficiary of the policy, if the insurance was in force, or those shown to be entitled in case the insurance was lapsed, will receive the payment.

Mr. Gray strongly emphasized that veterans should not write V-A about their dividend, because letters will only cause the payment to be delayed. Special application blanks are now being prepared and it is hoped they can be printed in time to be

available sometime in August in every post office, veterans service organization and V-A Offices.

The form is a 3-fold card upon which the veteran writes his full name, service number, insurance policy numbers and his address. He retains one-third of the card which contains the instructions, and mails the other two parts to the V-A, where the application part of the card is separated and the return acknowledgment portion mailed back to the veteran to inform him that V-A has received the application. Any letter writing, Mr. Gray reiterated, would only serve to delay processing the applications.

National Service Life Insurance was created by Public Law 801 of the 76th Congress, approved on October 8, 1940.

Nearly 20,000,000 policies were issued to more than 16,500,000 (million) members of the armed forces, some veterans having two or more policies. There currently are 7,215,000 policies in force, with a face value of $41,552,000,000 (billion).

Cutoff date for payment of the dividend is the anniversary date of the policy during 1948. The special dividend will not be paid on policies issued after January 1, 1948, though such policies may participate in some later dividend distribution, Mr. Gray said.

Distribution—RA Complete; SP Complete; DR Complete.

Interrogatory No. 33

Is it not true that the Veterans Administration

made such announcement available to representatives of the press and that it was given nation-wide publicity?

Answer to Interrogatory No. 33

Yes, the attached news item was released to representatives of the press as stated in answer to Interrogatory No. 32 above.

Interrogatory No. 34

Is it not true that prior to making such announcement the Veterans Administration or the Administrator of Veterans' Affairs had made a determination that such a special dividend could and would be paid to such persons who made such application and who had had National Service Life Insurance in force during certain periods of time?

Answer to Interrogatory No. 34

Yes, the basis for computing the extent to which policies in the various groups would participate in the surplus available for distribution was determined in advance, but the question of any particular person's right to any specific amount was left for individual calculation and determination at a later date when that person's policy was reached.

Interrogatory No. 35

Is it not true that when plaintiff and others who had carried National Service Life Insurance during the specified periods made such application for payment of such special dividend they became en-

titled to receive such dividend as a matter of right subject only to administrative processing?

Answer to Interrogatory No. 35

No, policies in effect during the specified period could be held entitled to participate in the surplus available for distribution only after consideration of an application was completed by the Administrator or his subordinates. There were many circumstances which might diminish or destroy any right one might otherwise have had to receive payment of the special dividend.

Interrogatory No. 36

If the answer to the two preceding interrogatories or either of them is "No" or "It is not true" or the equivalent:

(a) What conditions, qualifications or limitations on the payment of such special dividend to such applicants were publicly announced by the Veterans Administration?

(b) What conditions, qualifications or limitations on the payment of such dividend to such persons existed by law, rule or regulation on September 10, 1949?

(c) When the Veterans Administration received such applications from plaintiff and others what, if anything, remained to be done or determined in order that such applicants might receive such special dividend or become entitled to receive same?

Answer to Interrogatory No. 36

(a) All basic facts pertaining to eligibility or qualification for such special dividend were pub-

licly announced; however, it was impossible, of course, to anticipate every factual situation or circumstance which might possibly arise in connection with individual cases affecting the right, or entitlement, to receive payment.

(b) While this question clearly calls for conclusions of law, the defendant has no objection to stating generally that limitations, conditions and qualifications on the payment of such dividend may be found in:

1. The terms of the National Service Life Insurance Act of 1940, as amended, including §812, 38 USCA, and pertinent regulations.

2. The common law right of set-off and other applicable legal principles, some of which are discussed in Administrator's Decisions 513 and 742, copies of which are appended hereto as a part of this answer.

[See pages 56-94.]

3. Administrative action by the Administrator of Veterans Affairs pursuant to authority vested in him by law. (See TB 4-49, 4-55, and 4-56 attached.)

(c) Upon receipt of requested information from policyholders, or their successors in interest, the Veterans Administration caused a review to be made of all of an insured's records for the purpose of determining the insured's age at the time of issue of the policy, the number of months the policy was in force prior to its anniversary date in 1948, and any other facts pertinent to eligibility of the applicant, such as determination that the holder had not forfeited his right under §812, 38 U.S. Code, misstated

his age, procured reinstatement of the policy, or any benefits thereunder by means of fraud, or under circumstances creating rights in the Government to reimbursement (including determination of the existence of indebtedness on the part of the policyholder or beneficiary subject to offset against any dividends otherwise payable). Mathematical calculation of the exact amount payable as special dividend would then be made by multiplying the monthly participation by the number of months the policy was in force prior to its anniversary date in 1948, and by making any lawful deductions indicated. See copy of memorandum dated January 15, 1948.

Interrogatory No. 37

Is it not true that the form for applying for such special dividend (V.A. Form 9-430) was prescribed, issued or printed in June, 1949?

Answer to Interrogatory No. 37

It is true that the form prescribed for completion by policyholders (VA Form 9-430) was printed during the period June to August, 1949, and authorized for general distribution on August 29, 1949.

Interrogatory No. 38

What determinations were made and what rules or regulations were promulgated by the Administrator of Veterans' Affairs concerning the declaration of a special dividend on National Service Life Insurance prior to January 16, 1950? Please attach copies.

Answer to Interrogatory No. 38

See answer to Interrogatory No. 34, supra; also Administrator's Decisions 513 and 742, attached as exhibits to answer to Interrogatory No. 36(b)2; supra; Memorandum of Administrator dated January 15, 1948, attached as exhibit to Interrogatory No. 36(c), supra; Technical Bulletins attached as exhibits to Interrogatory No. 36(b)3, supra; Regulations promulgated by the Administrator of Veterans Affairs, found in 38 C.F.R., §8.26 (1949 Edition) and §8.26(a), (Pocket Part of 1949 Edition).

[See pages 94-96.]

Interrogatory No. 39

Is it not true that the Veterans Administration determined that plaintiff, Paul E. Plesha, was entitled to a special dividend in the amount of $233.75 prior to the assertion of any offset or the making of any deduction from such dividend?

Answer to Interrogatory No. 39

It is true that the Veterans Administration determined that special dividend in the amount of $233.75 accrued to the credit of plaintiff, Paul E. Plesha, pursuant to rules and regulations pertaining to such dividend. It was previously determined, however, by the Administrator that plaintiff Paul E. Plesha was indebted to the Government in the amount of $221.05 for premiums advanced by the Government, as is more fully set forth in defendant's Answer.

* * * * *

(Exhibit to Defendant's Answer to Interrogatory No. 36(b)2.)

Administrator's Decision, Veterans' Administration, No. 513—March 1, 1943

Subject: Soldiers' and Sailors' Civil Relief Act of 1940, (Public No. 861, Seventy-sixth Congress), as amended by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public No. 732, Seventy-seventh Congress).

Question Presented: The provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress), do not specifically direct the collection from the insured of the amount paid by the Government to the insurer after the expiration of the period of protection because of failure of the insured to make settlement, but such provision is made in section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public No. 732, 77th Cong.), raising the question whether the collection may be made under the amendment as to those policies which were placed under the protection of article IV of the Act of 1940 and continued under the protection of article IV of the amendments of 1942.

Facts: While no specific case is presented the question is based upon the following statement of facts:

The provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public 861, 76th Congress), do not specifically direct the collection from the insured of the amount paid by the Gov-

ernment to the insurer after the expiration of the period of protection because of failure of the insured to make settlement prior thereto with the insurer. However, such provision is made in section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public 732, 77th Cong.), as follows:

The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

It is provided in the regulations, (par. R-3331), that a policy placed under the protection of article IV of the act of 1940 and which was under the protection thereof on October 6, 1942, by reason of a finding having been made prior to that date, will remain subject to the provisions of said act and the regulations published under authority thereof except that the policy will be subject to the benefits and privileges governing the period of protection and settlement as provided in sections 403, 404 and 405 of article IV of the amendments of 1942.

As to those policies placed under the protection of article IV of the act of 1940 and continued under the protection of article IV of the amendments of 1942, it is requested that you advise if the amount paid by the United States may be held as a debt due

by the insured and collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

Comment: Section 408, Public No. 861, 76th Congress, provided that the certificate so delivered should be held by the insurers as security for the payment of the defaulted premiums, with interest, and stated:

To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this act, and no loan or settlement or payment of dividend shall be made by the insurer of such policy which may prejudice the security of such lien. * * *

Section 406 of Public No. 732, 77th Congress, October 6, 1942, provided:

* * * The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

Under the original act, the United States was given a first lien upon any policy receiving the benefits of the insurance article subject only to any existing lien at the time the policy became subject to the act, without any statutory declaration as to any unpaid amount being a debt due the United

States, whereas under the amendment the amount paid by the United States on account of applications approved under article IV, as amended, are declared to become a debt due the United States to be collected either by deduction from any amount due the insured by the United States or as otherwise authorized by law and this notwithstanding the provisions of any other law. It is important to keep in mind that the "amount paid" by the United States under both acts is the amount not protected by the lien, i.e., the amount of the guarantee in excess of the proceeds of the lien.

In the congressional debates on Public No. 732, 77th Congress, Congressional Record, September 28, 1942, page 7788, Representative Sparkman stated:

Under the House bill nothing was said about these amounts being claims against the person in the armed forces after he got out of the service. The Senate provides that they shall be a claim against him and shall be collected against any amounts that may become due him by the United States. The House accepted the Senate provision.

In the Conference Report, 77th Congress, 2d Session No. 2481, it was stated:

The Senate amendment (sec. 406) made such payments a debt due to the United States and authorized collection by deduction from any future amounts due the insured by the United States. The conference agreement retains the Senate provision.

The insurance articles of both Public No. 861, 76th Congress, and the amendment thereto by the corresponding article of Public No. 732, of the 77th

Congress, were intended to furnish a method by which the United States Government voluntarily assumed the guarantee of premiums on commercial insurance carried by service men for their own benefit and convenience while they were in service and for a certain period thereafter. Essentially this was not a contract right and the United States Government received and asked for no consideration for extending the privilege. Under Public No. 861 of the 76th Congress, all that this statute referred to as a method of collection against loss was a first lien upon any policy receiving the benefits of article IV, subject to any preexisting lien. Under the amendment, as shown, where there is a default, the amount, if any, between the proceeds of the lien and the amount guaranteed and paid by the Government as a deficiency is declared a debt of the insured and may be satisfied from any amount due the insured by the United States, or in any manner otherwise authorized by law. Section 408 of Public No. 861, 76th Congress, was not specifically repealed, but by section 406 of Public No. 732, 77th Congress, the method of recovery, so to speak, of the United States was extended to permit satisfaction if necessary by deduction from any amount due the insured by the United States or as otherwise authorized by law. It is believed that the amendment, or change in the statute, was merely in cognizance of the original common law right plus the specific provision which permits set-off, notwithstanding such exemptions as those in section 454a, title 38, U.S.C., if indeed such exemptions would

prevent such recovery as that here considered. As to applications received as well as those approved prior to the amendment and continued under the act, as amended, the intent seems clear that the provision shall apply—as necessarily any payment made by the United States will be under article IV, as amended.

Held: There exists no question as to any modification of a contract; but in any view the Government's gratuitious assumption of liability conditioned upon the insured's application for the benefits of the act and the insurer's consent would not constitute such type of agreement as would preclude Congressional action looking toward reasonable safeguarding of the public interest. The question raised, whether the collection may be made under the amendment as to those policies which were placed under the protection of article IV of the act of 1940 and continued under the protection of article IV of the amendments of 1942, is answered in the affirmative. (Opinion of the Solicitor, Veterans' Administration, Feb. 3, 1943, approved by the Administrator Feb. 4, 1943, collection of debt due the United States under section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 if policy was protected under act of 1940 and protection continued under Amendments of 1942).

The foregoing decision is hereby promulgated for observance by all officers and employees of the Veterans' Administration.

Frank T. Hines,
Administrator of Veterans' Affairs

(Exhibit to Defendant's Answer to Interrogatory No. 36(b)2.)

Administrator's Decision, Veterans Administration, No. 742

April 1, 1947

Subject: Debt due the United States as to insurance protected under the Soldiers' and Sailors' Civil Relief Act of 1940—Effect of 1942 Amendments. Reconsideration of Administrator's Decision No. 513.

Questions Presented: 1. Whether, in view of the 1942 amendments to the Soldiers' and Sailors' Civil Relief Act of 1940, a payment made by the United States in discharge of the premium obligation pursuant to an application under the 1940 Act has the effect of creating a debt which the insured owes to the Government.

2. If a debt results, whether it may be collected in whole or in part out of other benefits to which the insured may be entitled under laws relating to veterans.

Comment: The correctness of Administrator's Decision No. 513 dealing with the above subject has been seriously questioned. The arguments which have been made in opposition to the Decision are regarded as sufficient to justify a re-examination of its underlying principles. There is a well recognized rule that an established administrative decision cannot be reversed if to do so would divest an individual of a vested right thus fixed. United States vs. Bank of Metropolis, 15 Pet. 377; 10 L. Ed. 744; of.

Butte A. & P. R. Co. vs. United States, 290 U. S. 127, 78 L. Ed. 222. It is also well recognized that an established administrative construction or practice should not be overturned in any circumstances except for the most cogent reasons. United States vs. Citizens Loan & Trust Co., 316 U. S. 209, 86 L. Ed. 1387. The rule last mentioned, of course, does not and must not be permitted to preclude reversal if, in the light of subsequent experience or more deliberate consideration, the decision is shown to be clearly erroneous, for the law is not so inflexible as to require administrative officers to perpetuate their errors or those of their predecessors. Bell vs. Hearne, 19 How. 252, 15 L. Ed. 614. Especially is this so in circumstances like those presently involved in which, by virtue of the specific provisions of section 407, Article IV, of the Soldiers' and Sailors' Civil Relief Act Amendments included in Public Law 732, 77th Congress, the findings of fact and conclusions of law made by the Administrator of Veterans' Affairs are not subject to review by other authority. Since a reversal of Adminstrator's Decision No. 513 would not disturb vested rights of an individual, there is no impediment thereto if it be determined that the Decision was erroneous and is not supportable.

The question has undergone careful re-examination. The language of Article IV of each of the several Acts (Public No. 103, 65th Congress, approved March 8, 1918, 40 Stat. 444-447; Public No. 861, 76th Congress, approved October 17, 1940, 54 Stat. 1183-1186; Public Law 732, 77th Congress, ap-

proved October 6, 1942, 56 Stat. 773-776, 50 U.S.C., app. §540-548) has been studied and the legislative history of each has been fully explored. As a result of this study it has been concluded that Administrator's Decision No. 513 should be affirmed not only insofar as it holds that a general, unsecured debt in favor of the United States results from payments made pursuant to transactions under the 1940 Act but also insofar as it holds that collection by setoff may be made in such cases. It is proper, however, to record not only the reasons for this conclusion, but also the arguments which have been advanced in favor of a reversal of the Decision.

The question involved in Administrator's Decision No. 513 was stated as follows:

"Question Presented: The provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress), do not specifically direct the collection from the insured of the amount paid by the Government to the insurer after the expiration of the period of protection because of failure of the insured to make settlement, but such provision is made in section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public No. 732, 77th Congress), raising the question whether the collection may be made under the amendment as to those policies which were placed under the protection of Article IV of the Act of 1940 and continued under the protection of Article IV of the Amendments of 1942."

The question was answered in the affirmative. Implicit in the holding of the Decision are two points:

(1) that a payment made by the United States in discharge of the premium obligation pursuant to an application under the 1940 Act has the effect of creating an obligation, i.e., a debt, which the insured owes to the Government and (2) that the debt may be collected by the method prescribed in section 406 of the 1942 Act (Public Law 732, 77th Congress). A reason assigned in support of the point last mentioned was the fact that any payment made by the United States would be subsequent, in point of time, to the 1942 Act, and the provisions thereof would govern as to collection of the resulting debt. It also seems that the declaration in section 406, Public Law 732, to the effect that the amount paid "* * * to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States * * *," was regarded as merely a legislative recognition of the original common law right of the United States to be reimbursed, and, hence, because the lien provisions of section 408 of the 1940 Act (Public No. 861, 76th Congress) were not specifically repealed, section 406 of the 1942 Act provided additional support for the conclusion that a debt exists. The real question, of course, is not whether a reason assigned for the Decision was correct but whether and to what extent the Decision itself was a proper one under the circumstances. This question requires consideration of the legal relationship between the insured and the Government which flows from transactions arising under the 1940 Act. For the purpose of determining what that relationship is, it is not

necessary, and perhaps not even proper except for limited purposes, to take into account the provisions of the 1942 Act.

The arguments which have been made against Administrator's Decision No. 513, may be summarized as follows:

(1) The indemnity provision of the 1940 Act (section 408) is identical with the indemnity provision of the 1918 Act (section 409), and neither affords a right or source of recoupment for the Government other than the enforcement of a lien on the policy.

(2) The legislative history of the 1918 Act, as well as the legislative history of the 1940 and 1942 Acts, reflects an understanding on the part of Congress that the United States was not to be repaid for disbursements it made to insurers over and above the cash surrender value of the policy.

(3) The fact that the 1942 Act specifies that the amount paid by the United States as a result of an application made thereunder shall become a debt due the United States by the insured, whereas the 1940 Act is silent in this respect, indicates that an amount paid by the United States as a result of an application under the 1940 Act does not become a debt due the United States.

(4) The 1940 Act, it is said, has been generally interpreted by the Government itself, as well as by others, as affording no right of recourse against the insured. In support of this argument reference has been made to certain statements of persons outside the Government, examples of which are the state-

ments attributed to Ganson J. Baldwin, in Legal Effects of Military Service under the Soldiers' and Sailors' Civil Relief Act, Yale University Press, Third Edition, p. 20, and of the Eastern Underwriter of November 13, 1942, p. 11, to the effect that under the 1942 Act the insured must reimburse the Government whereas he was not required to do so under the 1940 Act. It is also said that the Government, in its instructions and regulations under the 1940 Act, failed to mention recourse against the insured, and referred only to its right to repayment out of the cash surrender value of the policy.

Additional arguments have been suggested and others might be thought of, but, essentially, they constitute no more than a restatement of or an elaboration upon the points hereinabove stated. It is obvious, however, that consideration of the points stated, whether or not a categorical answer to each is deemed essential, would not be complete without extensive reference to the legislative history of the three acts and elaborate quotation from the record of proceedings thereon—a requirement which could not be avoided in any event if the true picture is not to be distorted. While, as may be inferred from what has already been said, the present decision rests almost entirely upon the language employed as well as that omitted in the Act and upon the resulting relationship, the legislative history and the administrative practice will be explored before formalizing the reasons for the conclusion.

The purpose of Article IV of the 1940 Act, as well as the purpose of Article IV of the 1918 Act,

was to protect from lapse certain policies of insurance (other than Government insurance) acquired by servicemen within the periods specified. It was recognized, of course, that due to the exigencies of the service, insureds might not be able to make remittances for premium payments within the time required by policy provisions. Accordingly, each of the Acts provided, in section 405, that policies of insurance protected thereunder should not lapse or be forfeited for the nonpayment of premiums during the period of such protection. The insurer was protected by bonds (under the 1918 Act) and by certificates (under the 1940 Act) issued by the Government covering the amount of the deferred premiums with interest, and, upon the termination of protection under the law, a balancing of accounts between the insurer and the Government was required, wherein, as to policies not matured by death or continued in force by the insured's payment of premiums, the insurer was credited with the bonds or certificates covering past due premiums and interest and the Government was credited with the cash surrender value of the policies. Under its guaranty the Government was required to pay the amount by which the bonds or certificates exceeded the cash surrender value. The Government was given a first lien on the policy, subject to any preexisting lien, but nothing was said in either Act as to what recourse the Government would have against the insured in respect to the amount it paid over and above the amount secured by the lien. The insurance provisions of the two Acts are, in all es-

sential aspects, identical, and since the legislative history of the 1940 Act is illuminating only to a very slight extent, it is proper to look to the legislative history of the earlier Act.

The proposal to grant the relief for soldiers and sailors which resulted in the enactment of Public No. 103, 65th Congress, was submitted jointly by the War and Navy Departments on August 29, 1917, and was introduced in the Senate as S. 2859. That bill provided in section 13 that within certain limitations, insurance granted prior to September .., 1917, should not lapse or be forfeited for nonpayment of premiums falling due during the period the insurance was protected, but, as introduced, the bill provided no means by which the insurer could collect premiums or be fortified with any certainty that they would be paid. These omissions evoked strenuous opposition on the part of insurance companies, with the result that, pursuant to suggestions by certain members of the Senate Committee (Hearing and Memoranda before the Subcommittee of the Senate Committee on the Judiciary on S. 2859 and H.R. 6361, pp. 119-121, 123, 132-139). a substitute provision was prepared which received the approval of both Government and insurance representatives. The substitute contained essentially the provisions finally adopted as Article IV of the Soldiers' and Sailors' Civil Relief Act of 1918. It is made plain by the provisions of the Act, as well as by its legislative history, that the undertaking of the Government was not to pay the premiums but only to guarantee their payment; in other words, the Govern-

ment did not displace the insured as the principal obligor. It is true, of course, as above indicated, that the Act did not specifically declare that a payment made by the Government to an insurer in final settlement of the insurance account should result in the creation of a debt owed by the insured to the Government; nor did it specifically declare that the payment should not have that result. It is equally true that statements may be abstracted from the hearings which tend to support arguments that the transaction did and that it did not create a debt. So, too, committee reports on the legislation are not very helpful. The report of the House Committee on H.R. 6361 (Report No. 181, 65th Congress, First Session; p. 151, Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, United States Senate), contains (pp. 157-158) the following statement:

"Any premiums so secured by Government bonds are paid as a loan on the policy. The Government to secure reimbursement is given a first lien on the value of the policy or its proceeds. * * * Just what the Government's financial burden will be can be little more than a guess, but it is plain that it will not be large. In the first place the Government only guarantees the payment of the premiums. If the soldier dies the insurance company will get its premiums out of the policy and the Government's guaranty will not be called upon. If the soldier comes back from the war he will repay the premiums if he continues the policy, and if he lets the policy

lapse the Government will be subrogated to his rights."

The language quoted above constitutes as clear a statement as any that may be found in the legislative history, but its inadequacy as an answer to the present problem is at once apparent when it is observed that it is as consistent with one view as it is with the other. Thus, so far as the 1918 Act is concerned, the failure of the legislative history to resolve the question requires that the answer be found where it should be sought in the first place—in the language of the statute, by application of established principles of law to the relationship thus created.

The 1940 Act (Public No. 861, 76th Congress, approved October 17, 1940) resulted from bills (S. 4270 and H.R. 10338) presented simultaneously by the War Department to the Senate and the House of Representatives. The insurance provisions of these bills were patterned on the 1918 Act. The Veterans Administration did not participate actively in the formulation of this legislation and did not make any specific recommendations concerning it. The reports of the committees (Senate Report No. 2109 to accompany S. 4270 and House Report No. 3001 to accompany H.R. 10338) contain almost identical language explaining the insurance provisions. In pertinent part, the Senate Report (p. 3) states:

"In the case of life-insurance policies, upon application by persons in the military services, the Administrator of Veterans' Affairs may guarantee payment of premiums in order to prevent lapsing

or forfeiture of policies. Such persons may, within 1 year after leaving the military service, pay up premiums unpaid by them and resume payment of regular premiums. If they do not, the policy lapses and the cash surrender value accrues to the Government to the extent necessary to meet the cost of the premiums which it has guaranteed."

Here again the legislative history is of little, if any, help, and the insurance provisions of this Act, like those of the 1918 Act, must be interpreted on the basis of the language employed in the statute.

The administrative practice under the 1918 and 1940 Acts has been advanced as an argument supporting the view that the insured owes no debt to the United States on account of its payment of the premiums on his insurance. For convenience, this practice will be examined before turning to the 1942 Act. In the administration of the 1918 Act the ultimate net loss to the Government, as shown by the Annual Report of the Director, United States Veterans Bureau for the fiscal year ending June 30, 1924, p. 445, was $19,518.40. The precise extent of the Government's efforts to collect from insureds who permitted their insurance to lapse under conditions requiring the Government to pay to insurers the difference between the premiums with interest and the cash surrender value of the insurance is not known, but it is clear that, in the administration of the 1918 Act, collections were effected in some cases. A list of at least 14 such cases is presently at hand. They reflect collections during the years 1923-24, and one such collection was made as late as October

8, 1925. For present purposes the amount of such collections and the extent to which efforts were made to effectuate them are matters of no importance. The significant thing is that they negative any idea or assertion that an administrative practice prevailed not to regard the insured as indebted to the United States.

It has been said that until Administrator's Decision No. 513 was released on March 1, 1943, the 1940 Act had been administered in such fashion as to indicate an administrative construction that the Government had no claim against the insured on account of any payments it made to the insurer over and above the cash surrender value of the policy. That is not a correct statement. In the first place, no legal opinion on the subject had been requested or given prior to the submission which led to Administrator's Decision No. 513. Secondly, administrative action under the law had not proceeded far enough to establish any fixed practice in respect to the question now under examination. It is true, of course, that a form of application for benefits under the 1940 Act had been prepared shortly after the Act was approved and that the form contained no assertion as to whether the insured would become indebted to the Government by reason of any payments it made to the insurer. The form (No. 380) did contain the following statement, appearing immediately above the place provided for the insured's signature:

"In consideration hereof, I hereby consent and agree that the United States shall be protected in

the amount of any premiums and interest guaranteed on the above numbered policy in the event of its maturity as a claim, or out of the cash surrender value of the policy at the expiration of the period of protection under the Act."

In this, as in all other essential matters, it was similar to the application (Bureau of War Risk Insurance Form 718), used in connection with the 1918 Act, reading as follows:

"I agree that the United States shall be reimbursed for any money advanced on account of unpaid premiums on the above policy (with interest at the rate of 5 per cent per annum), out of the above policy, in the event of death or maturity, and out of any cash value, in the event such premiums are not paid within one year after the termination of the present war or the termination of my period of military service, whichever date is the earlier."

Each of these forms was patterned on the Act to which it related and, like the Act, it was silent as to whether the transaction resulted in a debt. As to collections under the 1940 Act, no administrative practice had grown up, because, by the terms of the Act itself, the time for that had not arrived when the amendments of 1942 were proposed.

Early in 1941 extensive amendments to the 1940 Act were prepared by the Veterans Administration and submitted to both houses of Congress for consideration. These amendments were designed largely to liberalize the law, but they also had as one of their purposes the clarification of certain points which had been controverted. Among such points

were the following: (1) the question of the consequent debt; (2) The question of the right of offset out of other benefits (section 406); (3) the question of coverage of Government (Converted) and National Service Life Insurance policies (section 400). Due to misconstruction as to the first, some insurance agents engaged in a practice of selling the maximum amount of insurance, $5,000, at relatively high premium rates, to persons expecting immediate induction into the service, thereupon assuring such persons that they would have to pay only one quarterly premium and that thereafter the Government would carry the insurance free so long as they were in the service and during the prescribed time thereafter.

The draft of the bill which led to the enactment of the insurance provisions of Public Law 732, 77th Congress, was introduced as S. 1372 in the Senate on April 22, 1941, and as H.R. 4546 in the House of Representatives on April 28, 1941. As thus introduced the draft included, as a part of section 406, the following language:

"* * * The amount paid by the United States to an insurer shall become a debt due to the United States by the insured * * *"

Pursuant to a proposal made by the Association of Life Insurance Presidents on May 16, 1941, the above quoted language was changed to read:

"* * * The amount paid by the United States to an insurer On Account of Applications Made Subsequent to Approval of This Act shall become a debt due to the United States by the insured * * *"

As passed by the Senate on November 10, 1941, and as finally approved, section 406 reads, in pertinent part, as follows:

"* * * The amount paid by the United States to an insurer On Account of Applications Approved Under the Provisions of This Article, As Amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law."

Substitute bills were introduced in the House and one of them, H.R. 7164, as passed by the House on June 18, 1942, contained no provision similar to the above. However, the language was restored in conference. The conference report to accompany H.R. 7164 (Report No. 2481, dated September 24, 1942) stated:

"Under the House bill any amounts paid by the United States to an insurer on account of approved applications do not become a claim against the owner of the policy. The Senate Amendment (sec. 406) made such payments a debt due to the United States and authorized collection by deduction from any future amounts due the insured by the United States. The conference agreement retains the Senate provision."

It seems highly significant that in explaining the conference report on the floor of the House (Cong. Rec., September 28, 1942, p. 7788) Representative

Sparkman stated: "Under the House bill nothing was said about these amounts being claims against the person in the armed forces after he got out of the service. The Senate provides that they shall be a claim against him * * *" (Emphasis supplied.)

When the Veterans Administration representative appeared before the House Committee on Military Affairs on May 25, 1942, he testified as follows:

"The Chairman: You said something, as I understood you, about the cancellation of the policy regardless of the equity of the soldier in the policy. For instance, if he paid in so much money, and it had a certain reserve value, they would cancel it anyway?

"Mr. Breining: The act says that the policy shall be surrendered at the end of the coverage, unless a man settles with the insurer otherwise, even though he may have a substantial equity.

"What we propose in the system we are advocating is simply that the Government guarantee the premiums; when a man applies for coverage under this act, that the Government guarantee the premiums, leaving it to the man and the insurer to settle any accounts between them, and at the end of the term of coverage of the act, if the man has an equity in the policy, that the equity will either be covered by extended insurance, or such other provisions as the policy may call for.

"The Chairman: In other words, do the same thing, so far as the Government is concerned, as a private insurance company does, by guaranteeing

the extended insurance value for the cash that may have been paid in?

"Mr. Breining: Exactly.

"The Chairman: Does the revised bill which the subcommittee has suggested contain that provision?

"Mr. Breining: Yes, it does; and in the bill that was just passed by the Senate, and in the bill proposed by the subcommittee that is covered and the accounting system is simple, that is, it leaves it to the man and the insurer to settle their accounts, except where there is a deficiency, and in such an event the Government will pay the deficiency. In the bill as proposed by the subcommittee there is a provision that allows not only a year after the termination of the man's military service, as defined in the act, but there shall be an additional 3 years which the man may have to pay off whatever indebtedness may be against the policy under this act.

"The Chairman: That continues the policy in effect, but would he be required to pass a physical examination at the end of the 3 years?

"Mr. Breining: No, the policy will remain in full effect over the full period of time.

"If the cash value of the policy is as great or greater at the termination of the coverage of this act than the lien against it, then by simply paying the premium he can continue the policy in force and the loan made under this act be liquidated by him in any such manner that he wishes.

"Only where the amount of the loan exceeds any value which the policy may have, does the Government concern itself with the matter then he is, in

substance, given 4 years to discharge that excess amount, having to pay only at the end of the second year a third of the amount, the remainder being payable during the ensuing 3 years.

"The Chairman: What I am concerned about is this: Under the provisions of the bill as presented here, would the soldier who is carrying an insurance policy be protected to the end of the duration?

"Mr. Breining: Yes; he would, and the amendment provides that if at the end of the period of the coverage he wishes 3 years more, all he has to do is pay a third of the excess indebtedness and that will carry him for the 3-year policy, at which time he also has to make provision to pay the current premiums and arrange for the other two-thirds being paid by installments.

"The Chairman: If he had a loan against the policy he could adjust it and continue to carry the insurance by the payment of the premiums, just as a straight, ordinary life policy?

"Mr. Breining: According to the terms of the contract. It is a liberalization, distinctly. (Hearings, pp. 36-37.)

* * * * *

"The Chairman: How are the premiums paid on the existing $5,000? Does the insured pay half and the Government pay half, or does the insured pay all of it?

"Mr. Breining: The insured is liable for all of the premiums of the $5,000 policy, the Government acting really as a guarantor. However, if there is a default, there would not be any liability for the

whole amount, in excess of the cash value under present construction of existing law. (Hearings, p. 38.)

* * * * *

"Mr. Harness: Your recommendation is that the amount be limited to $5,000?

"Mr. Breining: Yes.

"Mr. Thomason: You mean that is the maximum any soldier would have?

"Mr. Breining: That is the maximum that would be carried under this act. That is distinct from the $10,000 under the Government's policy, so this would permit insurance in the amount of $15,000 in all, to be carried by the man without any extra burden of paying premiums to a commercial insurer.

"Mr. Sparkman: That means that the Government will guarantee the payment of premiums to private insurance companies up to the amount of $5,000.

"Mr. Breining: Yes.

"Mr. Thomason: That is in addition to the $10,000?

"Mr. Breining: Yes.

"Mr. Sparkman: But the gentlemen should understand this, that the soldier is not relieved from the liability of paying premiums. The Government simply guarantees that they will be paid * * * (Hearings, p. 40.)

* * * * *

"Mr. Sparkman: Every payment that the Gov-

ernment makes on each policy is secured by any cash-surrender value there may be in the policy?

"Mr. Breining: Yes.

"Mr. Sparkman: The only loss that the Government could sustain would be when and if the payment exceeded that cash-surrender value which the soldier did not pay back.

"Mr. Breining: That is true, but many of these policies are just term policies, without any cash-surrender value or reserve value, because the writing of term policies is much more prevalent now." (Hearings, pp. 40-41.)

The following extracts from the debates in the House of Representatives on H.R. 7164 (Congressional Record, June 18, 1942, pp. 5548-5549) are pertinent:

"Mr. Sparkman: The Government steps in immediately upon the application of the soldier and guarantees the payment of the premiums. Remember, the Government does not actually pay the premiums. The Government simply says to the insurance company, 'We will guarantee that these premiums will be paid.' Now, having once taken that position, the Government continues to guarantee the payment of those premiums. If the cash reserve of the policy is used up, the Government still guarantees the payment of the premiums, and in such a case when the solder comes out of the service, there will be an excess indebtedness on the policy, and the soldier then has the right within 12 months' time to arrange with the insurance company to pay one-third of that excess indebtedness during that 12

months' period, and to adjust the balance over a period of 3 years.

* * * * *

"Mr. Keefe: Just so that I may understand this statement correctly, if a man goes into the military service and he has a private contract of insurance in force, upon which there may be a cash-surrender value, he is required, under the terms of that contract, to pay premium installments in order to keep his contract in force. If he has not the necessary income, the Government, under this act, as I understand it, steps in and guarantees the payment of that premium so as to keep his contract of insurance in force. Then when he comes out of the service he owes an accumulation of back premiums, which the Government has guaranteed in order to keep his contract in force, and then he may either apply, as I understand you, the cash-surrender value of the policy in liquidation of those past-due premiums that the Government has guaranteed or he may enter into a contract and pay those premiums out of other funds over a period of 3 years. In no event do I understand that the Government itself actually pays the money to the insurance company, but the basis of guaranteeing these premiums is so as to keep his policy in force and effect, so that he will have it when he comes out of the service. Is that correct?

"Mr. Sparkman: The gentleman has correctly stated the situation."

It is necessary to bear in mind that the debate in the House of Representatives, from which the

foregoing is extracted, was on H.R. 7164, which did not contain the provision of section 406 now in question or any similar provision. In this respect, H.R. 7164, at the time of the above-mentioned debates and at the time of its adoption by the House, was silent on this question just as the 1918 and 1940 Acts had been.

Fairness compels admission that the legislative history of the 1942 Act reflects a probable belief, though an incorrect one, on the part of the 77th Congress that the 1940 Act (passed by the 76th Congress) had been construed as not giving rise to a debt owing by the insured to the Government upon the latter's payment to the insurer of the amount by which the premiums with interest exceeded the cash surrender value. And it may very well be said that some members, without too much opportunity for reflection upon the legal consequences, may have entertained the belief that the 1940 Act should be so construed. But, if true, do these circumstances compel a holding that no debt arises? Careful consideration leads to the conclusion that they should not be allowed to do so. Highly significant, it would seem, is the fact that Congress did not at any time provide an express exemption from the debt; the only express provision is directly to the contrary—in 1942. Section 406 of the 1942 Act merely declares a debt in respect to applications approved under that Act; it does not absolve any debtor. Manifestly, transactions resulting in payment under the 1940 Act, which must be completed according to the terms of that Act, either give rise to a debt or they

do not do so. If they do, they remain unaffected by the 1942 Act. If they do not, it would have been beyond the power of Congress in any event to change the agreement retroactively so as to create a debt. Hence, all that was done and said in the 1942 Act or in the legislative proceedings incident thereto does not change the legal relationship.

What, then, are the obligations of the insurer, the insured and the Government, in respect to applications for protection under the 1940 Act? By accepting the Acts' provisions, the insurer becomes obligated to maintain the insurance in force while awaiting later payment of earned premiums by the insured or by the Government, if the insured does not pay. The right of the insurer to receive the premium payments is absolute, for the protection was afforded and it must be paid for. The amount that must be paid is fixed: it is the total amount of premiums that fall due during the period of protection plus interest from the several due dates.

The absolute right of the insurer to receive the premium payments necessarily means that someone is obligated to pay them and that the insurer is entitled to look to such person or persons for payment. Primarily, the insurer looks to the insured for payment. That this is so is made plain by the provisions of Section 410 which, in effect, require the insured, within one year after the time when the Act ceases to be in force, to pay all past-due premiums with interest if he desires to continue the insurance. It is also made plain by the provisions of section 409, pursuant to which, if the insured dies

while in service, the insurer deducts the premiums, with interest, from the proceeds of the insurance. And it is made clear by the Act's commitment of the cash surrender value (which, in other circumstances, is ordinarily regarded as the insured's to dispose of as he pleases) to stand for the premiums owing to the insurer. Of course, if the insured fails to discharge his obligation to pay the premiums with interest, the Government is required to pay them, but in so doing it is entitled to receive credit to the extent of the cash surrender value of the policy so that the Government is actually out of pocket only that amount which represents an excess of the premiums with interest over the cash-surrender value. This, and no more, could the insurer actually compel the insured to pay. Hence, the Government pays only to the extent that the insured could be compelled to do so. Under these circumstances, the Government pays, as guarantor, the insured's obligation and, applying principles of law so well established as to be incontrovertible, the Government has the right to be reimbursed by one whose debt it has paid.

There are many reasons why the conclusion just stated should be accepted as correct. Those readily apparent and probably most significant will be referred to in some detail.

First. The lien provision in section 407 of the 1940 Act that the United States, to indemnify it against loss, shall have a first lien on the policy can only mean that it is the total amount of the premiums and interest to which the Government's ob-

ligation attaches. Obviously, the lien provision is inconsistent with an assertion that the Government's obligation relates only to the amount by which the premiums and interest exceed the cash surrender value, for if that were true the lien provision would be utterly meaningless since the res, i.e., the cash value of the policy, to which it attaches, would be extinguished before the Government's obligation matures. So it must be concluded that as to the total amount of the premiums with interest the insured remains the principal obligor and the Government is secondarily liable as guarantor. Hence, there is no basis whatever for an assertion that the insured is the principal obligor for only so much of the total sum as represents the cash surrender value of the policy and that the Government is the principal obligor as to the remainder. Yet this must be the inevitable result of a holding that the insured is not indebted to the Government for the amount it pays to the insurer.

Second. To hold that the insured is not indebted to the Government in such circumstances would produce results so inequitable and falling so unevenly upon those protected under the 1940 Act that the intelligence and sense of fairness of Congress should not be impugned by ascribing to it such an intent unless no other conclusion can be drawn from the language of the Act itself. For example, it would be possible, in that event, for an insured, whose policy had no cash surrender value or only such as accrued at no cost to him, to allow his insurance to lapse upon termination of the Act's protection,

thereupon pay nothing at all, and yet be free of all obligations. On the other hand, the Act specifically requires another, who loses his life in service, to pay the premiums by having them deducted from the proceeds of the insurance. Still another who at the time of seeking the Act's protection was insured under a policy possessing a cash surrender value—substantial in amount but not exceeding the unpaid premium—, must lose even that which he had before entering service unless he pay the premiums. He cannot avoid such loss by having the Government step in and pay the insurer, and hence he cannot even delay the payment beyond the time provided. Finally, one who desires to continue the insurance in force after the Act's protection ceases must pay the back premiums according to the terms of his policy, and this is so no matter what the cash surrender value may be. But, it has been argued, inequities are not infrequently found in legislation, and it is said that they ought to be overlooked here. These inequities, however, are precisely the opposite of what one would expect to find when a statute falls unevenly upon those affected by it. Moreover, their very existence depends upon a construction of the Act necessitating the addition of words not found therein, for the Act nowhere contains language relieving the insured of an obligation to reimburse the Government. Ordinarily, in the absence of an agreement or specific language to the contrary, one who benefits by having his guarantor pay his debt may be required to reimburse the latter.

Third. Inequalities of a sort not to be expected would result in other respects. For example, it cannot be denied that those who applied for protection under the 1942 Act are burdened with a debt if the Government pays their premiums; yet they, no doubt, were called into or entered the service when the nation was at war and they faced the possibility of early combat duty. Many, perhaps most, of those who applied under the 1940 Act entered service at a time when there could be no certainty that war would ensue. There is no valid reason for relieving the latter group of the obligation to repay while holding the former to theirs.

Fourth. Premiums on insurance issued by the Government under the War Risk Insurance Act, as amended October 6, 1917, and under the National Service Life Insurance Act of 1940 (approved only nine days prior to the approval of the Soldiers' and Sailors' Civil Relief Act of 1940) are required to be paid, and, except in the event of waiver on account of disability as provided in the contracts and the law, the insured could not and cannot avoid paying them. It seems unreasonable to assume, therefore, that Congress intended to have the Government provide in any circumstances private insurance at no cost to the insured while in every case requiring the payment of premiums on Government insurance.

Finally, the fundamental basis of the entire Act is protection of the person in service by temporary moratoria on certain obligations—as contract liabilities, rents, taxes and so forth. As this principle could not apply to insurance premiums payable only

voluntarily, the device was adopted of having the Government guarantee such payments upon the insured's application. In effect, the Government became the collecting agent for the insurers; but it is significant that under no circumstances did the Government undertake to assume any liability or obligation, as such, of any person subject to the provisions and benefits of the Act.

The other question decided by Administrator's Decision No. 513, that is, the right of recovery, has not been questioned, aside from the contention that there is nothing to recover under the original 1940 Soldiers' and Sailors' Civil Relief Act. If the foregoing conclusion is correct, that as a result of the Veterans Administration paying a veteran's premiums on his insurance the veteran is indebted to the Government, it follows as a matter of law that such indebtedness is collectible if the debtor have any assets which are not exempt. This raises the question whether benefits to which he otherwise may be entitled under laws relating to veterans are exempt from such claim or whether it may be collected in whole or in part out of such other benefits.

For more than half a century the Congress has thrown protection around benefits to veterans and their dependents. This protection took the form of section 4747, Revised Statutes, section 28, War Risk Insurance Act, October 6, 1917, as amended, and section 22, World War Veterans' Act, June 7, 1924, as amended. The exemptions afforded by such enactments were held by the accounting officers generally, and specifically by the Comptroller General,

not to prevent setoff in respect of claims of the United States. Indeed they were so construed by such officials as to permit the collection of one person's debt out of benefits accorded another person by way of derivative right, as, for example, collecting the veteran's indebtedness from payments due his widow or minor children. In 1935 Congress repealed all of the foregoing provisions by the Act of August 12, 1935, Public No. 262, 74th Congress, and provided in section 3 thereof (38 U.S.C., 454 (a)) that payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans shall be exempt from the claims of creditors but that such provisions shall not attach to claims of the United States arising under such laws. This had the intended effect of excluding recovery, from benefits payable, of indebtedness arising under other laws and circumstances, but, as construed and applied by the accounting officers, it did not in all cases prevent recovery of one person's indebtedness from benefits payable to another. To clarify this matter there was enacted section 5, Public No. 866, 76th Congress, approved October 17, 1940, the same date on which the President approved Public No. 861 of the same Congress, the Soldiers' and Sailors' Civil Relief Act of 1940. This section 5 (38 U.S.C.A. 454 (a)) amended the foregoing section so as to confine the Government's right of collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Veterans Administration to claims of the United States against the person or beneficiary who be-

comes indebted by reason of overpayments or illegal payments made to him or to his dependents as such under laws relating to veterans. It will be noted that while the 1935 statute related to claims of the United States arising under laws relating to veterans, the 1940 enactment related to claims arising out of overpayments or illegal payments under such laws. The real purpose of the amendment as shown by the legislative history was stated in Administrator's Decision No. 607 as follows:

"* * * The exact purpose and effect of this amendment is to make clear (1) that any collection out of benefits flowing to an individual or to such individual's estate would be only on account of the indebtedness of such individual and not of any other, and (2) that only those debts could be so collected or off-set which arose out of payments made under the laws relating to veterans, thus overcoming the long-established precedents based upon the Comptroller General's decisions mentioned above. These provisions have, by statute, been made applicable to subsequently enacted laws, as for example, National Service Life Insurance policies under the National Service Life Insurance Act of October 8, 1940, section 616 of which makes applicable the provisions of Public No. 262, 74th Congress, as amended. Similarily, section 1500, Public Law 346, 78th Congress, provides that the 'provisions of Public No. 262, 74th Congress, as amended (38 U.S.C. 454 (a)), shall be for application under this Act * * *.' The report mentioned, supra, stated specifically that this related, among

other things to the exemption from claims of creditors.

'It is therefore apparent that as to any indebtedness arising under such Act and not waived under the wide authority of the Administrator, there is for consideration the application of the provisions of said Public No. 262 as amended. It will be observed that thereunder off-set shall be confined to 'overpayments or illegal payments' made under laws relating to veterans. It has consistently been held in construing this specific language that anything of value which a veteran secures under color of the laws relating to veterans and to which he is not specifically entitled by such laws is an overpayment within the meaning of the statute. * * *"

Thus, as indicated in Administrator's Decision No. 607, in construing such laws it has been held consistently that anything a veteran receives under laws administered by the Veterans Administration to which he is not entitled as a matter of right is an overpayment, and unless waived may be recovered by setoff against the benefits to which he is otherwise entitled. Of course, in applying this, recovery is made in such manner as not to defeat the purpose of benefits otherwise payable, that is, by deduction of small amounts over an extended period of time.

With respect to the specific ruling in Administrator's Decision No. 607 existing to guarantees paid on loans under Title III of the Servicemen's Readjustment Act, 1944, violent exception was taken

by several interested organizations, and representations were made to the Congress resulting in the introduction of bills which, if enacted, would have precluded such recovery by way of offset. The Administrator of Veterans Affairs, reporting adversely on one of said bills (H.R. 5446), relied upon the principles declared in Administrator's Decision No. 607 and forwarded copies of said Decision, or of the legal opinion upon which it was based, to the committees considering this and similar bills. None of said bills was enacted or even reported, and, although numerous amendatory acts relating to veterans were passed by that and the succeeding (79th) Congress, no Congressional action disagreed with the principles stated in said Decision.

The failure of Congress to disagree, as reflected by the developments just described, while possibly persuasive, is of course not determinative. But it is important that in the 1942 Amendments to the Civil Relief Act the Congress specifically provided for collection by setoff or otherwise in the case of payment of guarantees made on applications filed under the amended Act (section 406). Hence, to say that Congress thereby negatived the same or a similar result in respect to applications under the prior Act would be to adopt the argument of legislation by negation—hereinabove rejected as to resultant indebtedness for the same reason. As said in Administrator's Decision No. 607, if the Government pays a veteran's obligation pursuant to law and the veteran refuses to pay the debt therefrom arising, he is in a very real sense overpaid and there is an

overpayment within the meaning of the exemption statute, supra, 38 U.S.C.A., 454 (a). Viewed in that light it is clear that the recovery provision of section 406 is little, if any, more than a recognition of the right which theretofore existed and is a mere clarification of the applicable statutes.

Held: 1. A payment made by the United States in discharge of the premium obligation pursuant to an application under the Soldiers' and Sailors' Civil Relief Act of 1940, has the effect of creating a debt which the insured owes to the Government.

2. The resulting debt may be collected by setoff against other benefits to which the insured may be entitled under laws relating to veterans.

3. Administrator's Decision No. 513 is affirmed. (Opinion of the Solicitor, dated February 7, 1947, approved February 14, 1947.)

This decision is hereby promulgated for observance by all officers and employees of the Veterans Administration.

/s/ Omar N. Bradley, General, U. S. Army,
Administrator of Veterans Affairs

(Exhibit to Defendant's Answer to Interrogatory No. 38.)

§8.26 Dividends. A National Service life insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans' Affairs. Any such dividends shall be paid in cash except that at the written request of the insured they may be

left to accumulate on deposit provided the policy is in force on a basis other than extended term insurance or level premium term insurance. Payment of dividends shall be without interest except when left to accumulate on deposit in accordance with the insured's written request. Interest on dividend accumulations will be credited annually at such rate as the Administrator may determine. Dividend accumulations and unpaid dividends shall not be available for the payment of insurance premiums except at the written request of the insured made before default in payment of a premium. Any unpaid dividend on a lapsed policy will be paid in cash to the insured, if living, otherwise to his estate. Dividend accumulations will be used in addition to the reserve on the policy for the purpose of computing the period of extended term insurance or the amount of paid-up insurance as provided in §§8.29(a) and 8.30, respectively. Upon maturity of the policy, any dividend accumulations not previously withdrawn and any unpaid dividends will be payable in cash to the person currently entitled to receive payments under the policy.

(Sec. 602, 54 Stat. 1009, as amended; 38 U.S.C. and Sup. 802)

§8.26a Special dividends. Any Special National Service life insurance dividend that may be declared shall be paid in cash only. Such special dividends shall not be accepted to accumulate on deposit. Unpaid special dividends shall not be available to pay premiums.

(Sec. 313, 60 Stat. 789; 38 U.S.C. 512d) (14 F.R. 2832, May 28, 1949)

[Printer's Note: Interrogatory signed by Lawrence A. Schei for White, Harber & Schei, Attorneys for Plaintiff.]

[Endorsed]: Interrogatories Filed Nov. 8, 1951.

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[Title of District Court and Cause.]

## ANSWER TO COMPLAINT IN INTERVENTION OF MYRON L. KERN

Now comes the defendant and answering the Complaint in Intervention of plaintiff in Intervention Myron L. Kern defendants admits, denies and alleges as follows:

### First Defense

That the Complaint in Intervention fails to state a claim against the defendant upon which relief can be granted.

### Second Defense

That the court is without jurisdiction to hear and determine the cause of action alleged herein since it is one for recovery of special dividends and not cognizable under Section 617 of the National Service Life Insurance Act of 1940, as amended (Section 817 of Title 38 U.S.C.A.)

### Third Defense

That there is no disagreement between the plain-

tiff in intervention and the Veterans Administration with respect to the special dividends payable under his policy of National Service Life Insurance, which may be made the basis for the assumption by the court of jurisdiction of this suit under Section 817 of Title 38 U.S.C.A.

Fourth Defense

For answer to the allegations in the several paragraphs in plaintiff in intervention's complaint in intervention, the defendant says:

I.

It is denied that this action is maintainable under Sections 801 to 818 of Title 38 U.S.C.A.

II.

The allegations of paragraph II are admitted.

III.

The allegations of paragraph III are admitted.

IV.

The allegations of paragraph IV are denied. As a further answer thereto, the defendant says that pursuant to the authorization contained in Section 602(f) of the National Service Life Insurance Act, as amended (Section 802(f) of Title 38 U.S.C.A.), the Administrator of Veterans Affairs on January 16, 1950, officially declared and established the basis for computing the special dividends to be paid upon certain specific policies of National Service Life Insurance.

V.

The allegations of paragraph V are denied. Fur

ther answering, the defendant says that the plaintiff in intervention furnished to the Veterans Administration, on the form provided therefor, all the information requested of him by the Veterans Administration as a basis for consideration of his entitlement to special dividends.

VI.

The allegations of paragraph VI are denied. Further answering, the defendant says that the Veterans Administration determined that the plaintiff in intervention's $10,000.00 policy of National Service Life Insurance was entitled to participation in the special dividends to the extent of $396.00, but that payment of the full amount of the said dividends could not lawfully be made because of the fact that the plaintiff in intervention was, at that time, indebted to the United States in the sum of $302.06, as will more fully hereinafter appear; and further answering, the defendant says that a check in the amount of $93.94 was mailed to the said plaintiff in intervention representing the full amount of the dividends payable to him after deducting the amount of the indebtedness he owed the United States.

VII.

The allegations of paragraph VII are denied. Further answering paragraph VII of the said complaint in intervention, defendant denies that the plaintiff in intervention was notified on April 7, 1950, or any other date, that said plaintiff in intervention's claim for dividends was approved in part

and denied in part, but states the facts to be that the said plaintiff in intervention was, on or about April 7, 1950, forwarded a dividend statement showing that dividends in the amount of $396.00 had accrued under the plaintiff in intervention's National Service Life Insurance policy, and that a charge had been entered against the amount payable as dividends in the sum of $302.06, leaving a net balance of $93.94 for which check was enclosed; and further answering paragraph VII, defendant says that the sum of $302.06 which was shown on said statement as a charge against dividends payable under the insurance, arose in this manner: On December 14, 1941 two months subsequent to the said plaintiff in intervention's entry into the service, he made two separate applications in writing to the Veterans Administration for the protection of policy No. 428 642 and policy No. 395 773 issued upon the life of the plaintiff in intervention by the California Western States Life Insurance Company in the face amounts of $2000.00 and $3000.00, respectively, as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86); that the Veterans Administration processed said applications in all respects as provided by law and the regulations issued pursuant thereto by the Administrator of Veterans Affairs and that the said applications were approved and both the insurer and the plaintiff in intervention so notified on or about January 12, 1942.

That thereupon the defendant guaranteed the payment to the insurer California Western States

Life Insurance Company of such premiums as were not paid by the insured during the period of coverage which extended from the date of said applications until one year after the termination of plaintiff in intervention's military service; that on October 6, 1942 Public Law 732, 77th Congress, was approved by the President, and pursuant thereto the period of coverage and protection afforded commercial insurance policies under the Soldiers' and Sailors' Civil Relief Act of 1940 was extended to include the period terminating two years subsequent to discharge of an insured from service.

That upon learning of the separation of the plaintiff in intervention from military service, as of February 8, 1946, the Veterans Administration on June 1, 1946 dispatched to him a letter (V.A. Form F.L. 9-63), wherein the insured's right to terminate this protection being afforded his insurance was made clear; that he was further advised in the said letter that any premiums not paid by him covering the period of protection would, upon an accounting, become an indebtedness which he would owe the insurance company, subject to any credit allowed by the company for the then cash value of the policies; that the Government guaranteed the payment of this amount to the insurance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account"; that on February 8, 1948, the Veterans Administration terminated the protection, as provided by law, and thereupon the California

Western States Life Insurance Company rendered its report showing that premiums had accrued during the period of coverage in the amount of $1143.68, no part of which had been paid, and that after crediting the cash surrender value of the policies ($811.62) an unpaid balance of $332.06 remained which was subject to payment by the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of $332.06 in payment of which D. O. Voucher No. 1762273 dated May 13, 1948 was dispatched.

That plaintiff in intervention was duly notified of the said award and payment to the insurer and that the amount paid by the United States represented a debt due by him to the Government; that on or about October 23, 1948 the insured advised the Veterans Administration that "the payment of the total of subject indebtedness ($332.06) definitely imposes a hardship upon me"; that said plaintiff in intervention further advised he had been informed by the local San Francisco, California Veterans Administration office that monthly payments in the amount of $5.00 until such time as he could increase such payments would be acceptable; that thereafter said plaintiff in intervention transmitted in the form of such payments the total sum of $30.00 and no more; that said plaintiff in intervention made no further payments and thereafter the insured was notified that a deduction in the amount of $302.06 had been made from his National Service Life Insurance dividends and that

his indebtedness to the United States because of protection afforded his commercial life insurance policies under the Soldiers' and Sailors' Civil Relief Act was thereby liquidated.

Further answering, the defendant says that all of its actions aforesaid, and particularly the application of the sum of $302.06 payable to the said plaintiff in intervention as special dividends under his National Service Life Insurance policy to the said plaintiff in intervention's indebtedness to the United States in like amount for the protection afforded, at plaintiff in intervention's request, under the Soldiers' and Sailors' Civil Relief Act of 1940, and amendments thereto, was fully authorized by law, and that it owes the said plaintiff in intervention nothing.

VIII.

The allegations of paragraph VIII are denied.

IX.

The allegations of paragraph IX are denied.

X.

The allegations of paragraph X are denied. In further answer thereto, the defendant says that it has fully discharged its obligation to the said plaintiff in intervention with respect to the special dividends payable under his policy of National Service Life Insurance and has fully paid to him all dividends to which he was lawfully entitled.

Wherefore, having fully answered, the defendant

prays that the said plaintiff in intervention take nothing by this action and that judgment be entered for the defendant and against the said plaintiff in intervention with costs, and for such other and further relief as may to the court seem just and proper.

Dated: December 1st, 1952.

CHAUNCEY TRAMUTOLO,
United States Attorney
/s/ By WM. H. LALLY,
Assistant U. S. Attorney

[Endorsed]: Filed December 1, 1952.

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[Title of District Court and Cause.]

## ANSWER TO COMPLAINT IN INTERVENTION OF JAMES E. MABBUTT

Now comes the defendant and answering the Complaint in Intervention of plaintiff in Intervention James E. Mabbutt defendant admits, denies and alleges as follows:

### First Defense

That the Complaint in Intervention fails to state a claim against the defendant upon which relief can be granted.

### Second Defense

That the court is without jurisdiction to hear and determine the cause of action alleged herein since it is one for recovery of special dividends and not

cognizable under Section 617 of the National Service Life Insurance Act of 1940, as amended (Section 817 of Title 38 U.S.C.A.)

Third Defense

That there is no disagreement between the plaintiff in intervention and the Veterans Administration with respect to the special dividends payable under his policy of National Service Life Insurance, which may be made the basis for the assumption by the court of jurisdiction of this suit under Section 817 of Title 38 U.S.C.A.

Fourth Defense

For answer to the allegations in the several paragraphs of plaintiff in intervention's complaint in intervention, the defendant says:

I.

It is denied that this action is maintainable under Sections 801 to 818 of Title 38 U.S.C.A.

II.

The allegations of paragraph II are admitted.

III.

The allegations of paragraph III are admitted.

IV.

The allegations of paragraph IV are denied. As a further answer thereto, the defendant says that pursuant to the authorization contained in Section 602(f) of the National Service Life Insurance Act, as amended (Section 802(f) of Title 38 U.S.C.A.), the Administrator of Veterans Affairs on January 16, 1950, officially declared and established the basis

for computing the special dividends to be paid upon certain specific policies of National Service Life Insurance.

V.

The allegations of paragraph V are denied. Further Answering, the defendant says that the plaintiff in intervention furnished to the Veterans Administration, on the form provided therefor, all the information requested of him by the Veterans Administration as a basis for consideration of his entitlement to special dividends.

VI.

The allegations of paragraph VI are denied. Further answering, the defendant says that the Veterans Administration determined that the plaintiff in intervention's $10,000.00 policy of National Service Life Insurance was entitled to participation in the special dividends to the extent of $352.00, but that payment of the full amount of the said dividends could not lawfully be made because of the fact that the plaintiff in intervention was, at that time, indebted to the United States in the sum of $205.75, as will more fully hereinafter appear; and further answering, the defendant says that a check in the amount of $146.25 was mailed to the said plaintiff in intervention representing the full amount of the dividends payable to him after deducting the amount of the indebtedness he owed the United States.

VII.

The allegations of paragraph VII are denied.

Further answering paragraph VII of the said complaint in intervention, defendant denies that the plaintiff in intervention was notified on May 26, 1950, or any other date, that said plaintiff in intervention's claim for dividends was approved in part and denied in part, but states the facts to be that the said plaintiff in intervention was, on or about May 26, 1950, forwarded a dividend statement showing that dividends in the amount of $352.00 had accrued under the plaintiff in intervention's National Service Life Insurance policy, and that a charge had been entered against the amounts payable as dividends in the sum of $205.75, leaving a net balance of $146.25 for which check was enclosed; and further answering paragraph VII, defendant says that the sum of $205.75 which was shown on said statement as a charge against dividends payable under the insurance, arose in this manner: On March 4, 1941, one day subsequent to the said plaintiff in intervention's entry into the military service, he made application in writing to the Veterans Administration for the protection of policy No. 420558 issued upon the life of the plaintiff in intervention by the California Western States Life Insurance Company in the face amount of $2500.00 as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86); that the Veterans Administration processed said application in all respects as provided by law and the regulations issued pursuant thereto by the Administrator of Veterans Affairs, and that the said application was approved

and both the insurer and the plaintiff in intervention so notified on or about January 20, 1941.

That thereupon the defendant guaranteed the payment to the insurer California Western States Life Insurance Company of such premiums as were not paid by the insured during the period of coverage which extended from the date of said application until one year after the termination of plaintiff in intervention's military service; that on October 6, 1942 Public Law 732, 77th Congress, was approved by the President, and pursuant thereto the period of coverage and protection afforded commercial insurance policies under the Soldiers' and Sailors' Civil Relief Act of 1940 was extended to include the period terminating two years subsequent to discharge of an insured from service.

That after the separation of the said plaintiff in intervention from military service, as of December 25, 1945, and on or about February 7, 1947 said plaintiff in intervention and said insurer signed and forwarded to the Veterans Administration an application (V.A. Form 9-313 May 1946) for withdrawal of said above described policy from the protection of the Soldiers' and Sailors' Civil Relief Act and in said application for withdrawal said plaintiff in intervention and said insurer agreed as a condition to said withdrawal that the insurance under the above described policy would be terminated effective as of February 22, 1947.

That upon the termination of said protection and the termination of said policy as requested in said application and agreed upon between said plaintiff

in intervention and said insurer the said insurer, the California Western States Life Insurance Company rendered its report showing that premiums had accrued during the period of coverage in the amount of $269.25, no part of which had been paid, and that after crediting the cash surrender value of the policy ($63.50) an unpaid balance of $205.75 remained which was subject to payment by the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of $205.75 in payment of which D.O. Voucher No. 267927 dated April 10, 1947 was dispatched.

That plaintiff in intervention was duly notified of the said award and payment to the insurer and that the amount paid by the United States represented a debt due by him to the Government.

That on or about May 26, 1950 the insured was notified that a deduction in the amount of $205.75 had been made from his National Service Life Insurance dividends and that his indebtedness to the United States because of protection afforded his commercial life insurance policy under the Soldiers' and Sailors' Civil Relief Act was thereby liquidated.

Further answering, the defendant says that all of its actions aforesaid, and particularly the application of the sum of $205.75 payable to the said plaintiff in intervention as special dividends under his National Service Life Insurance policy to the said plaintiff in intervention's indebtedness to the United States in like amount for the protection afforded, at plaintiff in intervention's request, under

the Soldiers' and Sailors' Civil Relief Act of 1940, and amendments thereto, was fully authorized by law, and that it owes the said plaintiff in intervention nothing.

VIII.

The allegations of paragraph VIII are denied.

IX.

The allegations of paragraph IX are denied.

X.

The allegations of paragraph X are denied. In further answer thereto, the defendant says that it has fully discharged its obligation to the said plaintiff in intervention with respect to the special dividends payable under his policy of National Service Life Insurance and has fully paid to him all dividends to which he was lawfully entitled.

Wherefore, having fully answered, the defendant prays that the said plaintiff in intervention take nothing by this action and that judgment be entered for the defendant and against the said plaintiff in intervention with costs, and for such other and further relief as may to the court seem just and proper.

Dated: December 1st, 1952.

CHAUNCEY TRAMUTOLO,
United States Attorney
/s/ By WM. H. LALLY,
Assistant U. S. Attorney

[Endorsed]: Filed December 1, 1952.

[Title of District Court and Cause.]

## OPINION AND ORDER

No other country in the world has been so generous as the United States in the treatment of its service men and veterans. In the instant case, however, the plaintiffs are asking the Court to assist them in collecting from the Government sums that are not warranted by the National Service Life Insurance Act or the Civil Relief Act.

The plaintiffs contend that applicants for Government protection of their premium payments to insurance companies did not expect to reimburse the United States for that protection. In the plaintiffs' own pungent phrase, they expected the Government "to give them a free ride in their private insurance".

In the very first of the "General Provisions" of the Civil Relief Act, however, we are told that the "Purpose" of the statute is to "suspend enforcement of civil liabilities" of military personnel. Further on in the same section, we are again told that provisions are made "for the temporary suspension of legal proceedings and transactions" affecting service men. This opening section seems to have escaped the notice of counsel. 50 USCA App. Section 510.

Coming as they do at the very threshold of the statute, these Congressional declarations tincture the entire enactment. Every article, every section, every paragraph, every sentence is tinged with this "tem-

porary suspension" hue—unless a contrary legislative intent is plainly shown.

No such contrary intent has been even intimated in any of the sections pertinent to the present lawsuit.

1. Statement of the Case:

The original complaint was filed by the plaintiff Plesha. Complaints in intervention were filed by Mabbutt and Kern. The three pleadings were brought under the National Service Life Insurance Act of 1940 (38 USCA Sections 801-818). It is sought to recover amounts withheld by the defendant from a "special dividend" declared by the Administrator of Veterans' Affairs, alleged to be due each plaintiff on his policy of National Service Life Insurance, hereinafter referred to as "insurance".

Inter alia, it is alleged that each plaintiff made claim for all money alleged to be due him under that dividend; that each claim was approved in part and denied in part; that the partial denial "was without legal cause or justification"; and that there is a disagreement as to each such claim, within the meaning of 38 USCA Section 817.

The defendant has set up three principal defenses:

1. That the complaint fails to state a claim upon which relief can be granted.

2. That the Court is without jurisdiction of the cause of action, because it is not cognizable under 38 USCA Sections 445 and 817, and the defendant has not otherwise consented to be sued with respect to insurance; and because there is no disagreement

between the parties as to any claim under the insurance policies involved.

3. That the defendant has paid the full amount of all special dividends herein sued for, in cash or by applying them in repayment of the insured's debt to the defendant arising out of its payment to the insurer.

The case was tried to the Court without a jury.

3. The Questions Presented:

The questions presented are the following:

1. Does the complaint state a cause of action within the jurisdiction of this Court?

2. Are the plaintiffs entitled to recover the amount of special dividends from the defendant?

4. The Court Has Jurisdiction of this Action:

The defendant contends that "This action is not within the consent provisions of 817, 38 U.S.C.A."

Section 817 reads as follows:

"In the event of disagreement as to any claim arising under this chapter, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to the United States Government life (converted) insurance under the provisions of sections 445 and 551 of this title."

The defendant argues that "Although the right to receive the Special Dividend in suit may have arison out of, or by reason of, the contract of insurance, the United States did not by the contract undertake in all events to pay a policyholder a dividend". Reliance is placed upon the case of Candell vs. United States, 10 Cir., 1951, 189 F.2d 442, 444,

in which the Court construed Section 19 of the World War Veterans' Act, 1924, as amended, 38 USCA Section 445, which contains the following provision:

"The term 'claim' as used in this section, means any writing which alleged permanent and total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits, * * *." (Emphasis supplied.)

Regarding the above excerpt, the Court in the Candell case said:

"An insurance benefit means money or its equivalent paid as indemnity for a loss insured against. A dividend upon a National Service Life Insurance policy is paid under the terms of the contract which gives the insured the right to participate in gains and savings of the National Service Life Insurance Fund as they may be determined by the Administrator. Such a dividend is a return of premium. Such a dividend has no relation to the obligation to pay indemnity on the happening of the loss insured against."

With all due respect to the highest Federal Court in a sister circuit, this Court is unable to agree with the construction placed upon the word "insurance benefit". In 38 USCA Section 454a, which is a part of the very statute that the Court in the Candell case was construing, we find a reference to "overpayments of dividends, refunds, loans, or other insurance benefits.". (Emphasis supplied.)

That Congress intended that the courts should have the right of review over the decisions of the Administrator of Veterans' Affairs on insurance matters generally was clearly brought out in United States vs. Zazove, 1948, 334 U.S. 602, 611-612:

"On the other hand, we think it clear that an administrative regulation purporting to construe an ambiguous subsection of the National Life Insurance Act of 1940 is not automatically to be deemed valid merely because not plainly interdicted by the terms of the particular provision construed. The Administrator's general rule-making power, * * * is limited by the statute to 'such rules and regulations, not inconsistent with the provisions of this chapter, as are necessary or appropriate to carry out its purposes * * *' Moreover, a 1946 amendment to Section 608, designed to eliminate the finality of the decisions of the Administrator on insurance matters, amended the last sentence of Section 608 to add the words set out in italics:

"'Except in the event of suit as provided in section 617 hereof, *or other appropriate court proceedings,* all decisions rendered by the Administrator under the provisions of this Act, or regulations *properly* issued pursuant thereto, shall be final and conclusive on all questions of law or fact, and no other official of the United States, *except a judge or judges of United States courts,* shall have jurisdiction to review any such decisions.'

The extension of procedures available to secure judicial review, the interpolation of the word 'prop-

erly', and the addition, presumably out of an abundance of caution, of the tautological phrase 'except a judge or judges of United States courts' are indicative of congressional concern that the regulations of the Veterans' Administration be subject to more than casual judicial scrutiny when they are based upon a controverted construction of the statute."[1]

The defendant also contends that "The disagreement prerequisite to the jurisdiction of the court in an action brought under Sections 445 and 817, 38 U.S.C.A., does not exist in this case." It is asserted that the defendant has paid the dividend "to the use of each plaintiff by applying it to his indebtedness to the United States arising out of its payment * * * of insurance premiums" to the insurance company.

The plaintiffs, on the other hand, maintain "that when the Government paid only part of the dividend in cash, and exercised its claimed right of offset against the balance that (sic) it denied the claim, in part, as to such balance". In other words, the plaintiffs assert that they were not indebted to the defendant at all for the amounts so deducted, and that, even if they were so indebted, the defendant had no right of offset.

Indeed, the defendant itself has recently invoked the jurisdiction of a United States District Court in similar cases. See United States vs. Nichols, DC

[1] See also United States vs. Roberts, 5 Cir., 1951, 192 F.2d 893, 896-897; Jensen vs. United States, DC Utah, 1950, 94 F.Supp. 468, 470.

Iowa, 1952, 105 F.Supp. 543 (three separate actions).

The present suit is based upon "disagreement as to claim * * * under a contract of insurance" involving "insurance benefits", and therefore Section 445 is applicable. It is "a disagreement as to any claim arising under this chapter (providing for National Service Life Insurance)" and therefore Section 817, supra, is applicable.

Accordingly, the Court holds that it has jurisdiction of this cause.

5. The Defendant Was Entitled to Reimbursement of the Amounts Paid Out by It Under the Guaranties.

The central question in this litigation is whether the Relief Act of 1940, as originally enacted, imposed upon service men who put their private life insurance policies under the protection of that Act, a liability to repay the defendant for whatever the latter might have to disburse to the insurance companies under that statute.

This entire problem has been comprehensively discussed and, in this Court's view, has been correctly decided in two recent cases. The plaintiffs admit that both opinions are in point.

In United States vs. Nichols, supra, 105 F.Supp. at page 559, the Court thus summarized the situation:

"These defendants applied for protection of their insurance policies under the 1940 Act. As a result of the action of the United States in guaranteeing the payment of their defaulted premiums they re-

ceived insurance protection while in the military service and for a period thereafter. Such insurance protection was a benefit received by them for which they owed the insurance companies which had provided such insurance protection. The United States was required to pay their debts to such insurance companies. Under common law principles the United States would be entitled to reimbursement. The Court is of the view that neither the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 nor its legislative history are indicative of a Congressional intent to abrogate the common law right of the United States to reimbursement.

"It is the holding of the Court that the United States is entitled to reimbursement from the defendants in these cases."

Each of the three defendants in United States vs. Nichols appealed to the United States Court of Appeals for the Eighth Circuit. Each appeal was dismissed, "on dismissal of appeal filed by appellant". See 202 F.2d 956, 958.

The plaintiffs argue that "the provisions of Section 408 of the original (1940) Act giving the United States a first lien on the policy 'to indemnify it against loss' and the provisions in Sections 409, 410 and 411 for application of the cash surrender value of lapsed policies against the Government's obligation are inconsistent with the assertion of any further right of indemnification, implied or otherwise".

A similar argument was made by the plaintiff in Morton vs. United States, DC N.Y., 1953, 113

F.Supp. 496, 500. There it was contended that "because the 1940 version of the statute contemplated reimbursement to the Government only to the extent that the cash surrender value of a given policy was sufficient, it necessarily follows that the Government would have to bear any loss occasioned by a deficiency when the cash surrender value was measured against the Government's outlay."

While recognizing that "this argument is not lacking in plausibility", the Court observed:

"It is thought, however, that the answer lies in the realization that if it be allowed to prevail, there would necessarily be imputed to Congress an intention to make a gift to the holders of private insurance of any deficiency so arising, which would clearly indicate a legislative purpose to distribute treasury funds to a selected group among those who were called into the military service of the nation, because manifestly a considerable element would not have been able to provide themselves with private insurance policies, and therefore it seems that if the choice must be made between attributing to Congress a purpose to reimburse the Government eventually for funds advanced in the payment of premiums from any source whatever, and the discriminatory source of reimbursement which the plaintiff urges it must be concluded that the intention was not to make a gift in whole or in part of money to only holders of private life insurance policies."

The defendant avers—and its statement is not challenged here—that "the cases here under con-

sideration are but three of hundreds, and perhaps thousands, which involve application of the basic principles announced in (such) Administrator's decisions."

In the absence of a definite Congressional mandate, this Court is not prepared to assist in this latest attempt to siphon off some more of this nation's already fast-ebbing public fisc.

6. The Defendant Had the Right to Offset Any Dividends Payable Against the Plaintiffs' Indebtedness Arising Under the Relief Act.

One point related to this case not covered in the Nichols and the Morton cases, supra, is that which deals with the defendant's right to offset any dividends against the plaintiffs' debt arising from their failure to pay the premiums on their protected private policies. This question was not involved in the Nichols case, and in the Morton case the plaintiff admitted the defendant's right to offset National Service Life Insurance dividends in payment of debts owed to the United States.

The plaintiffs assert that "Section 454a of Title 38, U.S.C.A. * * * prohibits the collection by set-off or otherwise out of any veterans' benefits, including 'dividends * * * or other insurance benefits,' of any claim of the United States against the veteran 'except amounts due the United States by such beneficiary * * * by reason of overpayments or illegal payments made under such laws relating to veterans, to such beneficiary * * *"

At the outset, it will be helpful if there is cleared away a fallacy under which the plaintiffs seem to

be laboring. They suggest that the Relief Act of 1940 "is not 'a law relating to veterans,' but one relating to persons on active military duty. If this is correct payments or overpayments under that Act were not 'overpayments * * * made under * * * laws relating to veterans.'"

If the World War Veterans' Act of 1924, of which Section 454a is a part, does not apply to persons on active military duty so far as the exception to the general exemption is concerned, by the same reasoning it does not apply to the exemption itself. Both the exemption and the exception thereto are part and parcel of the identical provision. Section 454a reads in part as follows:

"From and after October 17, 1940, this section shall be construed to prohibit the collection by set-off or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans, * * * of any claim of the United States or any agency thereof against * * * (b) any beneficiary * * * except amounts due the United States by such beneficiary * * * by reason of overpayments or illegal payments made under such laws relating to veterans, * * *: Provided, however, That if the benefits be insurance payable by reason of yearly renewable term or of United States Government life (converted) insurance issued by the United States, the exemption herein provided shall be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim

is based, whether such indebtedness be in the form of liens to secure unpaid premiums, or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits: * * *" (Emphasis supplied.)

From the foregoing, it will be seen that the general exemption applies only to "benefits payable pursuant to any law administered by the Veterans' Administration AND relating to veterans," etc. If the plaintiffs are not "veterans" within the meaning of Section 454a, they cannot enjoy this exemption from "collection by set-off". If so, there is no need of resorting to the exception (to the exemption) urged by the defendant.

Indeed, it is only when an applicant for benefits under the Relief Act of 1940 survives active military service—and thus becomes a "veteran"—that the defendant's guaranty becomes actually effective. When the insured dies while still in military service, "the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy," etc. (50 USCA App. Section 549, Page 623, "Historical Note") In the latter event, there is no longer need for a guaranty.

When the defendant paid the plaintiffs' premiums and the plaintiffs failed to reimburse the defendant, there resulted, in effect, an "overpayment" to the plaintiffs within the meaning of Section 454a of 38 USCA.

In Administrator's Decision No. 742, dated April

1, 1947, General Omar N. Bradley quoted with approval the following language found in Administrator's Decision No. 607, dated November 24, 1944:

"It has consistently been held in construing this specific language that anything of value which a veteran secures under color of the laws relating to veterans and to which he is not specifically entitled by such laws is an overpayment within the meaning of the statute * * *"

General Bradley continued:

"As said in Administrator's Decision No. 607, if the Government pays a veteran's obligation pursuant to law and the veteran refuses to pay the debt therefrom arising, he is in a very real sense overpaid and there is an overpayment within the meaning of the exemption statute, supra, 38 U.S.C.A. 454(a)."

In United States vs. Citizens Loan & Trust Co., 1942, 316 U.S. 209, 214, the Court said, referring to a holding of the Veterans' Administration:

"This administrative interpretation over a period of 17 years, controlling the settlement of thousands of cases, is entitled to great weight, 'and such construction is not to be overturned unless clearly wrong, or unless a different construction is plainly required.' United States vs. Jackson, 280 U.S. 183, 193."

Furthermore, it is the opinion of this Court that the Administrator's construction was a reasonable one. The sovereign's right to a fair offset should not be lightly disregarded. Certainly that right is at

least equal to that of a private suitor, unless unequivocally curtailed by statute.

In United States vs. Munsey Trust Co., 1947, 332 U.S. 234, 239, the Court said:

"The government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him,'" (Cases cited.)

Both on reason and authority, therefore, this Court is of the opinion that the defendant was correct in offsetting any dividends payable against the plaintiffs' indebtedness arising under the Relief Act of 1940.

Certain subordinate points raised by the plaintiffs, such as the intention of Congress not to "increase" the "liability" of servicemen when it enacted the Civil Relief Amendments of 1942, have been carefully considered by the Court, and have been found to contain no merit.

7. Conclusion:

Accordingly, it is the judgment of this Court that the premiums and the interest paid to the insurer by the defendant at the plaintiffs' request constituted a debt due by them to the said defendant; and that the latter had the right to offset any payable dividends against such indebtedness of the plaintiffs.

The defendant will lodge appropriate proposed findings of fact and conclusions of law.

Dated: December 23, 1953.

/s/ DAL M. LEMMON,
United States District Judge

[Endorsed]: Filed December 23, 1953.

In the District Court of the United States, Northern District of California, Northern Division

Civil Action No. 6326

PAUL E. PLESHA, Plaintiff,
JAMES E. MABBUTT, MYRON L. KERN,
Plaintiffs in Intervention,

vs.

UNITED STATES OF AMERICA, Defendant.

## JUDGMENT

The above-entitled action having been heretofore tried to and submitted to the Court, said action was taken under advisement and counsel for the respective parties were requested to file briefs. Having fully considered the pleadings, the evidence, the briefs filed by counsel, and after being fully advised in the premises, the Court made findings of fact and conclusions of law which were entered and filed with the Clerk of this court on March 16, 1954.

On this 16 day of March, 1954, upon said findings of fact and conclusions of law, It Is Hereby Ordered, Adjudged and Decreed That Plaintiffs have and recover nothing in this action; that the relief prayed for in plaintiffs' complaint be and the same is hereby denied; and It Is Further Ordered and Adjudged that defendant have judgment for its costs herein taxed.

/s/ DAL M. LEMMON,
United States District Judge

[Endorsed]: Judgment Entered and Filed March 16, 1954.

[Title of District Court and Cause.]

## ORDER ADMITTING EVIDENCE

The above entitled action, having been heretofore tried to and submitted to the Court and certain evidence having been offered by plaintiffs and defendant having objected to the receipt of such evidence and the Court having reserved its ruling on the admissibility of such evidence, and the matter of the admissibility of such evidence having been duly considered by the Court:

It Is Hereby Ordered that all of the evidence offered by plaintiffs, as well as all of the evidence offered by defendant, be and the same is admitted into evidence.

This order shall be effective as of December 23, 1953, the date the opinion and order of this Court was filed with the Clerk of this Court.

Dated, March 25, 1954.

/s/ DAL M. LEMMON,
United States District Judge

[Endorsed]: Filed March 25, 1954.

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[Title of District Court and Cause.]

## AMENDED FINDINGS OF FACT

In the above entitled action the Court hereby amends its Findings of Fact, filed on March 16, 1954, so as to read as follows:

1. The court finds that on March 5, 1941, two days subsequent to his entry into the service, Plaintiff Paul E. Plesha made application in writing to the California-Western States Life Insurance Company as then provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86), for the protection of policy No. 419814 in the face amount of $2,500.00 issued upon his life by said company effective December 6, 1940. Following report by said company to the Veterans Administration of the filing of said application, the Veterans Administration approved plaintiff's request for coverage as to all premiums becoming due on and after March 6, 1941, and both the company and the plaintiff were so notified on or about June 20, 1941.

2. The court finds that the plaintiff was separated from military service on October 20, 1945, but did not notify the Veterans Administration thereof; that on November 14, 1946, the Veterans Administration, having learned of his separation, dispatched to him a form letter (VA Form FL 9-63), wherein he was advised (a) that he might terminate the protection being afforded his insurance or continue such protection until two years after his discharge date; (b) that any premiums accruing but not paid by him during the period of protection would, upon an accounting, become an indebtedness which he would owe the insurance company, subject to any credit allowed by the company for the then cash-value of the policy; and (c) that the Government guaranteed the payment of this amount to the in-

surance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account."

3. The court finds that at the end of the two-year period following discharge, on October 20, 1947, the Veterans Administration, having heard nothing further from plaintiff, terminated the protection and the California Western States Life Insurance Company then rendered its report showing that premiums and interest at 6 per cent per annum, compounded annually, which was the interest rate on policy loans specified in plaintiff's policy, with said insurance company, had accrued during the period of coverage in the amount of $343.93, no part of which had been paid, and that after crediting the cash surrender value of the policy ($82.88), an unpaid balance of $261.05 remained which was subject to payment by the plaintiff or the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of $261.05, in payment of which United States Treasury Check No. 59,311,294, dated January 2, 1948, was dispatched to said company.

4. That on to wit, February 13, 1948, the plaintiff was duly notified of the said award and payment to the insurer and was notified that the amount paid by the United States represented a debt due by him to the Government; that on or about March 11, 1948, the insured advised the Veterans Administration that he was not in a position at that time to

make payment and requested information as to what mode of payment he might avail himself of "in order to take care of this obligation"; that, after further exchange of correspondence, the insured was advised on August 10, 1948, that he could discharge this obligation by initially making payments of $10.00 per month, the payments to be increased as his financial condition improved "in order to liquidate the entire indebtedness within the allotted time of approximately one year"; that the plaintiff accepted said plan of repayment by forwarding three checks aggregating $40.00 which were duly credited by the Veterans Administration; however, plaintiff made no further payments and there remained outstanding and unpaid the sum of $221.05.

5. The court finds that the plaintiff filed application with the Veterans Administration for the special dividend payable with respect to National Service Life Insurance in force prior to the anniversary date in 1948; that the Veterans Administration determined, subsequent to January 16, 1950, that the plaintiff's $10,000 policy of National Service Life Insurance was entitled to participate in such special dividend to the extent of $233.75, but withheld payment of $221.05 of the said dividends because of the fact that it had also determined that the plaintiff was, at that time, indebted to the United States in such amount for protection afforded his commercial insurance policy as aforesaid.

6. The court finds that on February 17, 1950, the plaintiff was notified by the Veterans Administra-

tion that a deduction in the amount of $221.05 had been made from special National Service Life Insurance dividends otherwise payable to him and that his indebtedness to the United States because of protection afforded his commercial life insurance policy under the Soldiers' and Sailors' Civil Relief Act, was thereby liquidated. The Veterans Administration thereafter and prior to the institution of this suit paid plaintiff the unpaid balance of special dividend in the amount of $12.70.

7. The court finds that plaintiff, although advised of the computation and payment of the indebtedness, as aforesaid, did not at any time prior to filing this action protest the correctness thereof and payment by the Veterans Administration to the California-Western States Life Insurance Company of the sum of $261.05, as premiums and accrued interest at the policy loan rate, which accrued during the period his policy was under protection afforded by the Soldiers' and Sailors' Civil Relief Act of 1940, and the amendatory Act of October 6, 1942.

8. The court finds that on March 4, 1941, one day subsequent to his entry in the service, Intervenor James E. Mabbutt made application to the California-Western States Life Insurance Company for the protection of policy No. 420,558 issued upon his life by said company effective December 12 1940, in the face amount of $2,500.00, on the Ordinary Life plan, with annual premium of $36.35; that said company reported said application on March 12, 1941, to the Veterans Administration,

and on June 20, 1941, the Veterans Administration approved said application effective with the annual premium due March 12, 1941, and notified both the said Intervenor and the insurer.

9. The court finds that following the said Intervenor's separation from the service on December 25, 1945, coverage of his policy was terminated by the Veterans Administration effective February 22, 1947, at the request of the said Intervenor and said company; that the company reported that unpaid premiums and interest at the policy loan rate of 6 per cent compounded annually on the Intervenor's account totaled $269.25, with credit of $63.50, representing the cash-surrender value of the policy to date of termination of coverage; that the net amount due the insurer by the United States pursuant to its guaranty was $205.75; that on April 4, 1947, both the said Intervenor and the company were notified of the approval of an award to said company in said sum of $205.75; that payment of said sum was made by the United States to the said company pursuant to said award, and this Intervenor has never questioned the correctness of said award and the payment made by the United States to said company on his account.

10. The court finds that on, to-wit April 22, 1947, the said Intervenor was notified, by Veterans Administration Form Letter FL 4-62, that the company had been paid the amount theretofore awarded and was notified that the amount paid by the Government represented a debt due by him to the United States which should be promptly remitted;

that on April 29, 1949, said Intervenor was again requested to pay the amount paid the company by the Government, but failed to make any response in respect thereto.

11. The court finds that the above Intervenor filed application for special dividend, above-referred to, on Veterans Administration Form 9-430, June 1949, and that it was thereafter determined by the Veterans Administration that the Intervenor's National Service Life Insurance was entitled to participate in special dividend payable with respect to insurance in effect prior to 1948 to the extent of $352.00.

12. The court finds that the Veterans Administration thereupon deducted the sum of $205.75 from special National Service Life Insurance dividend, which otherwise would have been payable to the Intervenor as aforesaid, applied said amount in liquidation of the Intervenor's indebtedness to the United States, and on or about May 26, 1950, remitted to the Intervenor the balance of $146.25 payable as such dividend.

13. The court finds that in arriving at the amount due as between the United States and the California-Western States Life Insurance Company for the protection afforded as aforesaid, unpaid premiums with interest at the policy loan rate, to-wit 6 per cent per annum payable in advance, were used as the base figures against which cash surrender value of said policy was credited.

14. The court finds that on to-wit, December 14, 1941, Intervenor Myron L. Kern made application

in writing to the California-Western States Life Insurance Company for protection of policy No. 428,642, in the face amount of $3,000.00, issued by said company, effective June 23, 1941, and policy No. 395,773 in the face amount of $2,000.00 issued by said company effective December 21, 1938; that following report of said applications by the company on to-wit, December 22, 1941, the Veterans Administration notified both said company and Intervenor Kern on January 12, 1942, of the approval of said applications effective with annual premiums due June 23, 1942, and December 21, 1941, respectively; that on to-wit, December 13, 1943, Intervenor Kern advised the Veterans Administration, in effect, that he had decided to pay the premiums on account of his said private insurance himself, and requested information as to any papers necessary to be executed, and as to "what options I may have to repay the Government for those premiums already paid by the Government on the above policies"; that he was advised in reply on December 24, 1943, that "as all premiums are to be paid direct to the insurance company when the insured is able to meet the premium payments" it was not necessary for any papers to be executed in order to resume payment of premiums. However, this Intervenor did not resume payment of such premiums and took no action to terminate the protection being afforded prior to February 8, 1948, when it was terminated by the Veterans Administration pursuant to Section 403 of the Act of October 6, 1942 (56 Stat. 773).

15. The court finds that following termination of said coverage, the California-Western States Life Insurance Company presented its statement of account, which indicated that as to policy No. 395,773 an aggregate of $461.70 for unpaid premiums and interest at the policy loan rate of 6 per cent per annum accrued during the period of coverage, against which cash-surrender value of $394.00 was applicable as credit, leaving a net amount due said company for such coverage of $67.70; that as to policy No. 428,642 premiums and interest in the aggregate amount of $681.98 had accrued, which was subject to credit of $417.62 representing cash-surrender value, leaving a net amount due the said company for protection afforded thereunder during the period of coverage of $264.36.

16. The court finds that on to-wit, April 19, 1948, payment was made by the Government to the California-Western States Life Insurance Company in the aggregate of the net sums above-stated, and that both said company and Intervenor Kern were notified of said award on said date.

17. The court finds that on September 22, 1948, Intervenor Kern was again advised of the award made and that payment had been made to the company; and was notified that the amount which had been paid to the company was a debt due by him to the United States; that on October 23, 1948, the insured wrote the Veterans Administration that payment of the total indebtedness ($332.06) would impose a hardship upon him and requested that he be allowed to make payments at the rate of $5.00

per month initially; that thereafter said Intervenor made payments in the total sum of $30.00, thus reducing the balance to $302.06.

18. The court finds that the above Intervenor at no time prior to the hearing of this case on January 23, 1953, either questioned the correctness of the award, or protested payment by the Veterans Administration to the California-Western States Life Insurance Company of the sum of $332.06, as premiums and accrued interest at the policy loan rate, which accrued during the period the policy was under protection afforded by the Soldiers' and Sailors' Civil Relief Act of 1940, and the amendatory Act of October 6, 1942.

19. The court finds that the above Intervenor filed application for special dividend on Veterans Administration Form 9-430, June 1949, furnished him for the purpose by the Veterans Administration; that subsequently the Veterans Administration determined that his policy was entitled to participate in the special dividend declared with respect to National Service Life Insurance in effect prior to 1948 in the amount of $396.00; that the Veterans Administration thereupon applied $302.06 in payment of the balance found due by Intervenor for protection afforded his commercial policy as aforesaid; and that on or about April 7, 1950, check for $83.94 was dispatched to the above Intervenor, and later, on to-wit June 7, 1950, additional check in the amount of $10.00 was forwarded to him, as the balance of special National Service Life Insurance

dividend payable after deducting the sum of $302.06 as above stated.

20. The court finds that, following passage of Public Law 732, 77th Congress on October 6, 1942 (56 Stat. 773), the California-Western States Life Insurance Company elected, pursuant to the privilege extended by Section 408(2) of said amendatory Act, to surrender to the United States all certificates theretofore issued pursuant to the provisions of Section 407 of the Act of October 17, 1940, and that thereafter settlement was made between the United States and the California-Western States Life Insurance Company as contemplated by said amendatory Act.

21. The court finds that the amounts withheld from the plaintiff and each of the intervenors in this case by the Veterans Administration from special National Service Life Insurance dividends, were applied by the Veterans Administration to the indebtedness to the Government as found by the Administrator of Veterans Affairs to exist on account of protection afforded said plaintiff and intervenors under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 and the amendatory Act of October 6, 1942.

22. The Court finds that, as originally issued, the said policies of life insurance issued to plaintiffs and referred to in the preceding finding contained provisions permitting the insured to borrow from said insurance company on the sole security of the policy by applying for a policy loan; that these policy loan provisions provided that interest in the

amount of 6% per annum, compounded annually, would be added to the amount of the policy loan, and further provided that when the amount of the policy loan, thus increased, exceeded the policy loan values the policy would be cancelled; that none of said policies imposed on the insured a personal liability to repay such policy loan.

23. The Court finds that in accordance with Section 407 of the Soldiers' and Sailors' Civil Relief Act of 1940, the Secretary of the Treasury of the United States set the interest rate to be paid on the certificates mentioned in said Section at three per cent (3%) per annum, not compounded.

24. The Court finds that pursuant to said Act and the regulations prescribed thereunder, the Administrator of Veterans' Affairs prescribed Insurance Forms 380, 381, 382 and 394, all of which were used in handling the protection of plaintiffs' policies, and copies of which are in evidence herein.

25. The Court finds that pursuant to Section 401(2) of said Act the Administrator of Veterans' Affairs issued the notice therein called for (V.A. Insurance Form 385), a copy of which is in evidence herein.

26. The Court finds that Harold W. Breining and H. L. McCoy made the statements attributed to them in Interrogatories 27, 28 and 29; that said Harold W. Breining was then Assistant Administrator of the Veterans Administration, in charge of all matters relating to insurance, and said H. L. McCoy was then an official of the Veterans Admin-

istration, with the position of Director of Insurance.

27. The Court finds that plaintiffs were not consulted with regard to such election made by California-Western States Life Insurance Company; that plaintiffs did not individually or collectively join in such election or consent or agree to any modification of the relationship between them, the said insurance company and the defendant originally created by their applications for protection of their said policies and the approval of such application by defendant.

28. The Court finds that a substantial number of persons, in addition to plaintiffs, owned policies of life insurance issued by California-Western States Life Insurance Company which were brought under the protection of the Soldiers' and Sailors' Civil Relief Act of 1940 after its enactment and prior to its amendment in October 1942; that of the policies so protected eight were terminated by the death of the insured while the policy was under protection, and 38 of such policy-holders either paid the insurance company in cash the amount of unpaid premiums plus interest at the policy loan rate, or fully paid such premiums and interest by applying the cash value of their policies thereto.

29. The Court finds that the plaintiff and the plaintiffs in intervention and each of them at the commencement of this action and at the times of the interventions and at all relevant times resided

within the boundaries of the Northern District of California.

Dated: May 3, 1954.

/s/ DAL M. LEMMON,
United States District Judge

[Endorsed]: Filed May 3, 1954.

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[Title of District Court and Cause.]

## NOTICE OF APPEAL

Notice is hereby given that Paul E. Plesha, Plaintiff above named, and James E. Mabbutt and Myron L. Kern, Plaintiffs in Intervention above named, and each of them do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 16th day of March, 1954, and from the whole of such judgment.

Said Plaintiff and said Plaintiffs in Intervention on the 25th day of March, 1954, filed with the Clerk of the District Court of the United States for the Northern District of California, Northern Division, a Motion for Amendment of Findings of Fact and Conclusions of Law, and on the 3rd day of May, 1954, the Court acted on such Motion by amending its Findings of Fact made and entered in this action.

Dated: June 25, 1954.

/s/ WHITE, HARBER & SCHEI,
/s/ LAWRENCE A. SCHEI,
Attorneys for Appellants Paul E. Plesha, James E. Mabbutt and Myron L. Kern.

[Endorsed]: Filed June 25, 1954.

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[Title of District Court and Cause.]

## DESIGNATION OF RECORD

Appellants Paul E. Plesha, James E. Mabbutt, and Myron L. Kern, hereby designate as the record, proceedings and evidence to be contained in the record on appeal in this action, the following:

1. Complaint of Paul E. Plesha.
2. Defendant's Answer to Complaint.
3. Complaints in Intervention of James E. Mabbutt and Myron L. Kern.
4. Defendant's Answers to such Complaints in Intervention.
5. Requests for Admissions numbered 1 through 17 (b), and Replies thereto.
6. Written Interrogatories numbered 1 through 41, and Answers thereto.
7. The entire transcript of the proceedings and evidence at the trial of this action.
8. All exhibits introduced at said trial by Plaintiff, Plaintiffs in Intervention, and Defendant.

9. Order Admitting Evidence, filed March 25, 1954.

10. Judgment entered March 16, 1954.

11. Motion for Amendment of Findings of Fact and Conclusions of Law, filed March 25, 1954.

11-a. Finding of Fact, etc.

12. Findings of Fact and Conclusions of Law as modified and filed May 3, 1954.

13. Notice of Appeal, filed June 25, 1954.

14. This Designation.

15. The complete record and all of the proceedings and evidence in this action.

/s/ WHITE, HARBER & SCHEI,
/s/ LAWRENCE A. SCHEI,
Attorneys for said Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed June 25, 1954.

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[Title of District Court and Cause.]

## CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this Court in the above entitled case, and that they constitute the record on appeal herein as designated by the parties.

Complaint.

Answer.

Complaint in intervention (Kern).

Complaint in intervention (Mabbutt).

Answer to complaint in intervention (Kern).

Answer to complaint in intervention (Mabbutt).

Written interrogatories submitted to U. S.

Request for admissions.

Defendants reply to request for admissions.

Defendants reply to request for admissions.

Request for additional admissions.

Additional written interrogatories.

Opinion and order.

Findings of fact and conclusions of law.

Judgment.

Motion for amendment of findings of fact, etc.

Order admitting evidence.

Amended findings of fact, etc.

Notice of appeal.

Cost bond on appeal.

Designation of contents of record on appeal.

Order extending time to docket appeal.

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 18a.

Defendant's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N and O.

One volume Reporter's Transcript (Jan. 23, 1953).

One volume Reporter's Transcript (March 30, 1953).

In Witness Whereof, I have hereunto set my

hand and the seal of said Court this 31st day of August, 1954.

[Seal] C. W. CALBREATH,
Clerk
/s/ By C. C. EVENSEN,
Deputy Clerk

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In the District Court of the United States, Northern District of California, Northern Division

No. 6326

PAUL E. PLESHA, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

JAMES E. MABBUTT and MYRON L. KERN, Plaintiffs in Intervention,

vs.

UNITED STATES OF AMERICA, Defendant.

## TRANSCRIPT OF PROCEEDINGS

Friday, January 23, 1953

Before: Hon. Dal M. Lemmon, Judge.

Appearances: For Plaintiffs and Plaintiffs in Intervention: Lawrence A. Schei, Esq., Bank of America Bldg., Sacramento, Calif. For the Defendant: William H. Lally, Esq., Asst. U. S. Attorney, and David C. Byrd, Esq., Solicitor's Office, Veterans Administration. [1*]

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Friday, January 23, 1953—11:00 a.m.

The Clerk: Case No. 6326, Plesha vs. United States, for trial.

The Court: You may proceed.

Mr. Schei: We are ready to proceed, your Honor.

Mr. Lally: There is one matter before we start: I would like to introduce Mr. David C. Byrd from the Solicitor's Office of the Veterans Administration, who has come to assist in the presentation of this case, and I ask that he be permitted to do so.

The Court: Yes, he may participate with counsel for the Government in the trial of the case. [2]

* * * * *

Mr. Schei: There are some factual issues involved, your Honor. Your Honor, I take it, has been examining the file?

The Court: Yes.

Mr. Schei: A number of written interrogatories were submitted, answers to which have been furnished. We have been conferring in the United States Attorney's office yesterday afternoon and this morning concerning this matter. I understand that the United States Attorney would object to the relevancy as to some of the answers elicited by the interrogatories, and perhaps your Honor would wish to go into that [4] matter.

Then we desire to produce certain evidence that is not covered by the interrogatories, and we have been discussing with the United States Attorney's office the nature of that evidence, and so on.

Mr. Byrd: The first question, actually, your

Honor, is one, I believe, of jurisdiction. It is the contention of the Government that there is no jurisdiction in this Court in this case.

The Court: Well, I suspect that counsel will want to brief the case after the evidence is in, will they not?

Mr. Byrd: Yes.

The Court: Of course, the question of jurisdiction can be briefed at that time together with the other problems involved. I suppose you have gotten as far as you can, have you, through requests for admissions and through the interrogatory process?

Mr. Lally: Your Honor, as I understand it as a result of our conferences, there are three basic problems: One is jurisdiction, another is the problem of whether or not these particular plaintiffs were indebted to the Government by reason of the premiums we say the Government has guaranteed,——

The Court: Is there any dispute as to the guarantee?

Mr. Lally: It is the position, as I understand it, of Mr. Schei that it was a guarantee or benefit and the men were [5] not to pay it back, and therefore they are not indebted to the Government.

The third issue is that if they were so indebted, was the Government within its rights to offset the same as they did from the insurance benefits?

Those are the three issues, as I understand it, and the other issue that Mr. Schei discussed. Is that correct, Mr. Schei?

Mr. Schei: Yes, that is correct.

The Court: I take it that you had better call your first witness.

Mr. Lally: One thing in that regard: I believe there are many facts which maybe can be stipulated to, such as the applications for the policy, and I have complete files from the Veterans Administration that show a great deal of this, and I believe much can be accomplished in that regard, can it not, Mr. Schei?

Mr. Schei: I agree with that. We can show the applications that were made and the approvals, and so forth.

Mr. Lally: My point is, Mr. Schei, if you want to proceed with your case and suggest such fact stipulations as you believe pertinent, we can then tell you whether or not we will enter into them.

Mr. Schei: A good deal of this, your Honor, has been admitted by the pleadings and the interrogatories, and I don't [6] think there will be any question about the relevancy and the admissibility.

On the jurisdictional point I asked in one of the interrogatories, or two of them, I believe, for copies of the application for special dividends filed by the three plaintiffs. Those are not attached to the copy I got back. I understand they are here.

Mr. Lally: We have them available this morning, your Honor.

Mr. Schei: I would like to be sure that those are part of the record. There is no objection to those going in?

Mr. Lally: No. If they are not attached to the

original we will be happy to substitute the ones we have here, your Honor.

Mr. Schei: Is there any objection to those going in evidence?

Mr. Byrd: You are referring to these three applications?

Mr. Schei: I am.

Mr. Lally: We will supply you with these for evidence, Mr. Schei, and also stipulate that they are true copies of the originals as they were submitted.

Mr. Schei: Very well, then. Now, do you have any objection to their going in evidence?

Mr. Lally: No, we have no objection. You offer them; we have no objection. [7]

Mr. Schei: Very good.

The Clerk: Plaintiffs' Exhibit No. 1.

Mr. Schei: There are three of them there.

The Court: Three different applications? There are three different veterans?

Mr. Schei: There are three plaintiffs here.

The Court: All right; separate numbers.

The Clerk: Plaintiffs' 1 for Plesha, 2 as to Kern, and 3 as to Mabbutt.

(The applications referred to were marked Plaintiffs' Exhibits Nos. 1, 2 and 3.)

[See pages 253-256.]

Mr. Schei: Now, then, at a later date, after these applications were made, the Government sent to each of these men a statement advising them that their dividend was so much and that so much had been deducted. Do you have copies of those that could go into the record?

Mr. Lally: I would suggest at this stage, Mr. Schei, that we introduce the authenticated copies of the Veterans Administration's file, and if you wish to introduce those we will supply you those, and also authenticated copies, and they are admissible under Public Law 430 of the 73rd Congress, according to our understanding. If you wish to offer them they will be made available to you for that purpose.

Mr. Schei: This is not what I was talking about, Mr. Lally. [8]

By the way, do you have any objection to the introduction of the blank of the entire form of which those are a part that were introduced as Exhibits 1, 2 and 3?

Mr. Lally: There is no way of identifying them, Mr. Schei, as being the same, so we would be unable to enter into such a stipulation.

Mr. Schei: My only purpose in offering this, your Honor, the person who wanted to make application for these particular dividends picked up at the post office a form. He sent a part in and tore a part off. Now, this was a part torn off, which naturally those exhibits would not show, since that was not retained by the plaintiff.

Mr. Lally: We have no way of knowing that is the form used in this connection, if it was not changed at at later date, and therefore we cannot enter into such a stipulation.

Mr. Schei: There isn't any difference, is there?

Mr. Lally: We have no way of knowing, because

the form number does not appear on the photostatic copies already introduced.

Mr. Schei: Interrogatory No. 37: "Is it not true that the form for applying for such special dividend (VA Form 9-430) was prescribed, issued or printed in June 1949?"

The answer: "It is true that the form prescribed for completion by policyholders (V.A. Form 9-430) was printed during the period June to August 1949, and authorized for [9] general distribution on August 29, 1949."

This paper that I offer is VA Form 9-430, June 1949.

Mr. Byrd: Your Honor, may I say that we hate to take up the Court's time this way. Mr. Schei had not mentioned this form in our previous conferences about it or we would have looked it over and not taken the time.

Mr. Lally: Your Honor, we are quite willing to stipulate just as far as our answer to the interrogatory went, that the form prescribed for completion by policyholders, VA Form 9-430, was printed during the period June to August 1949 and authorized for distribution on August 29, 1949. But we are not prepared to nor can we stipulate that this form was the form that was in use in these Kern, Plesha and Mabbutt cases, because we have no way of comparing them to see whether they are identical. There may have been other Veterans Administration forms used that we are not cognizant of.

Mr. Schei: Wouldn't they be identified by a different number if they were a different form?

Mr. Lally: Certainly, but there is no form number on the photostatic copies we have. That is exactly our point.

Mr. Schei: Then without a stipulation might we offer these in evidence and have the Court's ruling as to the admissibility?

The Court: It wouldn't be admissible over the objection, unless there was proof of the relevancy and proof it was used. [10]

Mr. Schei: Very well. I will put Mr. Plesha on the stand and ask him if this is the form that he used. Will that be satisfactory, later on?

The Court: Very well.

* * * * *

The Court: I am going to take the recess, and those matters that you did not take up with opposing counsel and want to discuss with them in the way of obtaining stipulations, you may take up during the recess.

(Recess.) [11]

* * * * *

The Court: You have made some progress, have you?

Mr. Schei: I think so, your Honor. There really is not any basic disagreement, your Honor, about what the facts are here. I don't think there will be a single matter on which there is a conflict in the evidence in respect to the facts.

The Court: I suspected that.

Mr. Schei: Mr. Lally suggested that perhaps it would be well, if your Honor thought so, that

we each make a brief statement of what we considered the issues to be and our positions.

The Court: Well, I would want you to either stipulate to the facts orally or in writing so there will be no question or equivocation about the stipulations.

Mr. Schei: We are prepared to do that, I think, as to most of the facts. There will be some we will put on some testimony about.

The Court: Well, you then state what you understand the facts to be and I will accept them as the facts in the case unless there is some dispute voiced as you are stating those facts.

Mr. Lally: Your Honor, might I interject for just a moment? I think Mr. Schei and I are both of the mind that the physical facts as they happened in this case all down the line [12] since these three gentlemen applied for insurance policies when they entered the service are quite clear, and there is no disagreement as to anything. The disagreement is as to the legal effect or interpretation based on those facts.

The Court: You don't need any evidence, then, if that is the situation.

Mr. Lally: We have the records, as we told Mr. Schei, and will introduce them setting forth the correspondence and the application and all the documentary evidence to support——

The Court: Why can't those just be offered in evidence now as a group?

Mr. Lally: We will be very happy to.

Mr. Schei had, as I understand it, some other

points to raise that are involved and that are not within those basic fact issues concerning this insurance.

The Court: You mean factual matters to raise?

Mr. Schei: Yes, your Honor.

The Court: Well, why not get out of the way what you have agreed upon first, then? Put that in.

Mr. Schei: Very well.

Mr. Lally: The first file, your Honor, concerns the original claim of Paul Plesha, and the first we will offer will be the authenticated copy of the Veterans Administration file, which is stated to contain copies of the complete file in the actuarial service pertaining to Paul E. Plesha. [13]

The Court: Very well.

(The file referred to was marked Defendant's Exhibit A.)

[See pages 287-296.]

Mr. Lally: Now, the next, your Honor, will be the Veterans Administration file properly authenticated containing the photostats of correspondence and certain forms of the records maintained in the payee's account of Paul Plesha. That is also authenticated, your Honor.

(The file referred to was marked Defendant's Exhibit B.)

[See pages 297-305.]

Mr. Lally: The next is a properly authenticated file, copies of the file in the general accounting office. It has copies of the documents on file in this particular case again, California Western States Life Insurance Company vs. Paul E. Plesha.

(The file referred to was marked Defendant's Exhibit C.)

Mr. Lally: Your Honor, the next is also a Veterans Administration record, properly authenticated as a copy of the original dividend application pertaining to the insurance account of Paul Plesha, which we also offer.

(The copy of application referred to was marked Defendant's Exhibit D.)

Mr. Lally: The next, your Honor, is also a Veterans Administration record and properly authenticated copies or photostats, the front and back of the original premium record card in the case of Paul E. Plesha, which will also be offered. [14]

(The copy of premium card referred to was marked Defendant's Exhibit E.)

Mr. Lally: Next, your Honor, is an authenticated copy of VA Form 9-4612, a dividend work sheet, also in the case of Paul E. Plesha.

(The copy of form referred to was marked Defendant's Exhibit F.)

Mr. Lally: Then as to the complaint in intervention of James E. Mabbutt we have here, your Honor, and offer in evidence properly authenticated copies of the Veterans Administration file in the Insurance Actuarial Service pertaining to the account of James E. Mabbutt. We offer that in evidence.

(The file referred to was marked Defendant's Exhibit G.)

Mr. Lally: Now, as to the case concerning the plaintiff in intervention Myron Kern a similar file

from the Insurance Actuarial Service pertaining to the account of Myron L. Kern, which we also offer a properly authenticated copy of.

(The file referred to was marked Defendant's Exhibit H.)

Mr. Lally: This next also concerns the plaintiff in intervention Myron Kern, and is a properly authenticated copy of memorandum of public voucher for refund, stating the number and the account, and it concerns the case of Myron L. Kern, and is also a record of the Veterans Administration.

(The copy of voucher referred to was marked Defendant's Exhibit I.) [15]

Mr. Lally: Your Honor, there are certain answers to interrogatories that were propounded which we felt were immaterial and irrelevant. The truth of the matter is admitted, but we feel that certain of them are immaterial and irrelevant to the issues of this case.

Now, I don't know how the Court wishes to handle that, but we could make specific objections to them.

The Court: There has been no reply to the interrogatories to date.

Mr. Lally: Not as yet, your Honor. We will hold that, then, until the time that your Honor thinks it is proper to present it.

Mr. Schei: Well, we are handling this in a rather informal manner, your Honor. It will be our intention to offer the answers to all the interrogatories.

The Court: Well, do you offer them?

Mr. Schei: We do.

The Court: Now, what are the objections?

Mr. Lally: There are objections, your Honor.

Mr. Schei: I am wondering, your Honor, if these various matters are going to be briefed, since it is understood that the answers are factually correct, whether they are relevant or not is a question, and whether they are material, whether those questions could also be handled in briefs at the same time. [16]

The Court: I suppose those questions are interwoven with the main legal problems in the case.

Mr. Schei: They are, your Honor.

Mr. Lally: They are.

The Court: Why not, then——

Mr. Lally: We will reserve our right to make objections.

The Court: Then it will be understood there have been offered in evidence the answers to the interrogatories and all have been received except the ons that you specify that you object to, and my ruling upon those objections will await the final ruling in the case? You understand me now?

Mr. Lally: I understand. I just want to be sure Mr. Byrd does, your Honor.

The Court: Now, if you will specify the specific replies that you object to and state your ground for objection.

Mr. Lally: That is what I am prepared to do, your Honor.

Your Honor, Mr. Byrd suggests we interpose an objection as to all of them and then we can be

more specific in our brief, they to be reserved as your Honor suggests.

The Court: Very well.

Mr. Lally: Then we interpose an objection to all of them.

The Court: You had better state your objection.

Mr. Lally: That they are irrelevant, immaterial and incompetent to the issues in this case.

Your Honor, there have also been filed in this case [17] certain admissions. There was a request for admissions and then admissions filed, and we would like the same right so far as those are concerned, your Honor.

Do you have any objection? Also again they are interwoven in the case, your Honor.

Mr. Schei: I was just wondering if an admission made isn't in the case for all purposes, but——

The Court: It is in the same position as an interrogatory. If you have a favorable answer to an interrogatory it is an admission, and that is the way it comes into evidence.

Mr. Byrd: It is understood, your Honor, we will have the same reservation?

The Court: It will be understood that the admissions in the answers to the interrogatories have been offered in evidence and the Court reserves its rulings on the objections as to all of those until the final decision in the case.

Mr. Lally: Thank you, your Honor.

Mr. Schei: Might I ask—I did not inspect all of those documents as you were offering them—Have you offered yet the determination of the Vet-

erans Administration, that January 15, 1952 document?

Mr. Lally: All the documents heretofore entered contained each individual case. I believe that is the document that you refer to (exhibiting document to counsel)?

Mr. Schei: Yes. [18]

Mr. Lally: This also, your Honor, is a properly authenticated copy of a document of the Veterans Administration's records, and it is a copy of authorization of the 1948 special dividend on National Service life insurance, and it is dated August 10, 1952.

The Court: It applies to whom?

Mr. Lally: All three.

(The document referred to was marked Defendant's Exhibit J.)

The Court: Now does that complete the documentary evidence from the Veterans Administration file?

Mr. Lally: I believe it does, your Honor.

The Court: Now, Mr. Schei, if you want to supplement that with any evidence, do so.

Mr. Schei: Yes. Now, we had also discussed a stipulation concerning certain provisions of the policies of insurance these three plaintiffs took out from the California Western States Life Insurance Company, to show—The purpose of offering this is to show the nature of their obligation to the insurance company.

I have here the original policy of Mr. Plesha, Paul E. Plesha.

The Court: Do I understand that each one of these three veterans took out the same sort of policy with the same provisions? [19]

Mr. Schei: Not identical, your Honor, but in the particulars that were here concerned with, yes.

Mr. Lally: Your Honor, we are not prepared to stipulate that that is necessarily so, because the policy has not been made available to us. As both Mr. Schei and I understand it, we are agreed to stipulating that the policy of Mr. Plesha does contain the provisions that Mr. Schei wishes to read into the record to save putting the whole policy in, but so far as the other two are concerned, I believe there are people in the employ of the company who can testify to the contents, but we are not prepared to stipulate, because we have never had a chance to see the policy.

Mr. Schei: That is correct, your Honor.

Mr. Lally: Also, your Honor, we would like to interpose the same objection to this document and its relevancy and materiality to the case and reserve the ruling on the objection. However, we don't want to keep it out at this stage.

The Court: Very well.

Mr. Schei: This, your Honor, is an insurance policy issued by the California Western States Life Insurance Company, policy No. 419,814, issued to Paul E. Plesha. The face amount of the policy is $2500, annual premium $57.63; date of issue, December 6, 1940.

On the face page the policy contains the following language: "An annual premium of Fifty-seven

and 63/100 Dollars is [20] payable on each 6th day of December commencing on the date of issue hereof during the continuance of this policy subject to the provisions hereof pertaining to the payment of premiums."

At another place in the policy the following language—it is in the portion of the policy headed "Non-forfeiture and Loan Provisions"—the following is there, and I am now quoting:

"How Cash Loans are Made: After three full years' premiums shall have been paid hereon, the Company at any time while this policy is in full force and effect will loan, upon proper assignment of this policy and upon the sole security thereof, a sum equal to, or at the option of the owner hereof less than, the cash value hereof at the end of the then current policy year.

Interest on any such loan will be at the rate of 6% per annum, payable in advance on each anniversary of the policy. The Company will deduct from such loan any existing indebtedness hereon, any unpaid balance of the premium and interest on the loan to end of such policy year. If such interest is not paid when due it shall be added to the existing loan and shall bear interest at the same rate (providing that such loan will not thereby be increased to an amount greater than the cash value hereof.)

If the loan is for a purpose other than the paid premiums on policies in the Company, the granting of such [21] loan may be deferred by the Com-

pany in its discretion for a period of not exceeding three months after receipt of application therefor at the home office of the Company. Failure to repay any such loan or to pay any interest thereon shall not void the policy until the total indebtedness hereon to the Company shall equal or exceed the cash value at the date of default in payment of such interest.

At any time prior to the death of the insured or default in payment of any premium and prior to the maturity date hereof the whole or any part of any indebtedness may be repaid."

That is the end of that quotation.

Now, on this premium business, do you want me to read in the provisions on the premiums, or can we agree that the policy provides if the premiums are not paid the policy will lapse after the expiration of the thirty-day grace period?

Mr. Byrd: If the Court please, we are willing to stipulate that the policy in question contains a provision whereby if premiums are not paid within the grace period allowed by the policy that the policy will lapse.

Mr. Lally: Your Honor, it is understood that our objection runs to everything concerning the policies, however.

The Court: Very well.

Mr. Schei: The purpose of that, your Honor, is to show [22] that the premiums under the loan do not become a debt of the insured to the insurance company, and the effect of non-payment within the required time, and let us assume that that includes

any automatic loan provisions to take care of premiums, results not in the creation of a debt but in the cancellation of the policy.

The Court: That is agreed to?

Mr. Byrd: If the Court please, I just asked Mr. Schei if the policy contained a provision for automatic loans in addition to non-payment of the premium, and he after looking advised that it does contain such provision. Therefore, the agreement that we made that the policy contained the provision that the policy would lapse if the premium was not paid in thirty days is, of course, subject to other provisions to the contrary in the policy.

Mr. Schei: Which would include the fact that it would not lapse if the automatic loan kept it in force.

Now, I think, your Honor, what we will do as to the policies of the other two plaintiffs, which I do not have present in court—we have discussed this procedure with the representatives of the Government here—is to have testimony concerning the fact that similar provisions were in those policies, from an official of the company who is prepared to so testify.

The Court: You would not object to that on the ground [23] it is not the best evidence, or do you have the policies?

Mr. Byrd: No. In order to be cooperative as possible we have agreed with plaintiffs' counsel that if an official of the company—that the plaintiff may show what the records of the California Western

States Insurance Company reflect with respect to these policies.

The Court: Without producing the records themselves?

Mr. Byrd: Sir?

The Court: Without producing the records?

Mr. Byrd: Yes.

Mr. Schei: Well, the records of the insurance company are available, your Honor. The original policies are not. The records of the insurance company are present in court.

Mr. Lally: Then, your Honor, as to these policies concerning these other two people, the same objection and same reservation.

Mr. Schei: It may be understood as far as I am concerned, your Honor, that the objection of incompetency, irrelevancy and immateriality goes to all the evidence that we offer.

The Court: Very well.

Mr. Schei: Now, your Honor, there are certain facts concerning practices widespread in the insurance business which we wish to be before the Court, practices concerning the question of whether nonpayment of premiums creates a debt from the insured to the insurance company, and also questions as to [24] what the policy loan rate of interest being charged by major companies in the field was at the time that the 1940 act was before Congress.

There are standard texts in the field, Vance on Insurance is one, in which the author treats not only of the law on the subject but also recites

various factual matters as to the practices of insurance companies.

Now, I believe that your Honor has the authority to take judicial notice if the matter is brought to your judicial knowledge of matters generally known, and if practices of insurance companies are so widely accepted as to be discussed in that vein by recognized writers in the field——

The Court: You are referring to policies that are uniform throughout the insurance field?

Mr. Schei: No. We would like to prove either by referring your Honor to these works which say that such and such is the fact, No. 1, or by direct proof, which I think we could bring in here if necessary, No. 2, that except in very unusual instances premiums are not debts of the insured to the insurance company, that under nearly all policies issued by nearly all companies if the insured does not pay his premiums the effect is that the policy lapses, but the insured does not become indebted to the insurance company if he does not pay his premiums.

It can be established in one way or another, but that is [25] the fact, and these insurance texts so state.

Now, perhaps the materiality of that is not immediately apparent to your Honor. I assure you I have a very definite reason for wanting that.

The Court: I think I sense it.

Mr. Schei: And then the second matter, also covered in Mr. Vance's book, which is a standard work in the field, is certain statements concerning

the rate of interest charged for policy loans by insurance companies in general during 1939 and 1940. There is a section in his book where that is specifically covered.

Now, we discussed this matter with the United States Attorney. It would be possible for me, for example, on the policy loan provision to bring Mr. Marcus Gunn, who is vice president and actuary of the California Western States Life Insurance Company to testify that it was his job to know what the rates of interest were that were charged by various companies on these things, that he did know what they are and could testify what they are.

In addition, Mr. Dorety has made a very comprehensive study on the subject and has a tabulation that he can testify to, but it seems to me the thing could be shown most simply if we just took the statement of Mr. Vance as being—representing what the general practice in the life industry was at that time. It would save a good deal of time and also a good [26] deal of space in the record.

Would your Honor like to examine the passages in the book I am referring to?

The Court: Well, I was thinking about your interest problem. That would be in direct conflict with a specific and unambiguous provision in the policy which states that the rate of interest is 6 percent.

Mr. Schei: In this particular policy that is correct, your Honor.

The Court: You could not have a custom varying an express term, could you?

Mr. Schei: Well, my purpose in offering evidence on the rate of interest is the Congress in the 1940 act in several places refers to the interest to be the policy loan rate, and in another place it refers to the rate of interest that the Government is to receive on amounts of money tentatively due from the Government to the insurance company as shown on what they call statements of differences that were made *very* month by the Government, and perhaps to make a long story a little bit short, what I desire to show is that while the Government was paying under the 1940 act to the insurer 3 per cent simple interest on the amount of unpaid premiums shown by those monthly statements of differences, that under other provisions when a policy matured by death of the policyholder or when a policy was reinstated by the man getting out of the [27] service and paying up, the Government would be entitled to a credit of the amount of premiums so paid against these monthly statements of differences plus any interest at the policy loan rate.

In other words, I am trying to show that there is a difference between the interest rate for computation of the Government liability to the insurance company and for the computation of the credits to the Government on these monthly statements of differences because of the difference between 3 per cent and the practice in the business of charging more than that, namely, 5 or 6.

And that situation is of importance not only in ascertaining what happened in figuring out the liability on these three particular policies, but also

in ascertaining what the situation was with regard to which Congress legislated.

I may not be making myself very clear, but——

The Court: Well, the Government in its answer or answers, does it set out the indebtedness at the rate of 3 per cent simple interest?

Mr. Schei: No, your Honor. What has happened is this: Prior to the— Well, first the 1940 act was passed, then we will take the case of one of these plaintiffs. He had a policy of insurance before he went into the service. After he went into the service he made application that it be protected under the Soldiers' and Sailors' Civil Relief Act. That [28] application was approved. From that time until a date after the amendment of 1942 to the law his name appeared along with other names on a monthly report that the insurance company made up and submitted to the Government, and after those reports were submitted the Government would issue a certificate showing the balance due the insurance company on a particular monthly difference report.

Then in the 1942 act there was a provision whereby the insurance company could, if it so elected, have its account with the Government computed in accordance with a new formula, namely, the formula set forth in the 1942 act, which was a very different sort of a formula. They weren't concerned any longer with monthly differences between the credits on one side of the reports and the debits on the other.

They were now concerned with the policy as to

what amounts were to be credited, and the 3 per cent rate that was effective before in computing the Government's liability to the insurance company was thrown out the window and they put the policy rate on both sides, so that when you computed the amount that would be due under the 1942 act there was no longer any difference.

Now, the California Western States Life Insurance Company—and this also is a fact which we will offer either evidence on (we can do that)—elected to have the computations made in accordance with the 1942 act. [29]

So that when these particular plaintiffs allowed their policies to lapse, the computations made in Washington were based entirely on the method of computation provided in the 1942 act.

That is correct, isn't it?

(No audible response.)

Mr. Schei: From the beginning, from the day that the first premium became due that was protected back before the amendment of the act.

So what happened was that by consent of the Government and the insurance company, exercising its election, the method of computation was changed, but that was done without the consent of these plaintiffs that I represent and without their knowledge.

It had a double effect as to each of them which resulted not only in a different method of computing the Government's liability to the insurance company, and if these men are liable, consequently they are liable to the United States, but also had

the effect, as we will show by evidence, of increasing the amount of that liability.

Now, I think—that is one of the reasons for wanting this in the record, and the second reason—there is a second reason: In a particular case the Government might make a profit, so to speak, a paper profit perhaps, when a man protected under the 1940 act died or reinstated his policy by [30] paying up the back premiums, and it would come about in this way: that on one side of the monthly difference report the Government's liability would have been shown as this premium and that premium, and so forth, plus 3 per cent simple interest, and over on the other side when the man dies they add up all of his premiums that appeared on these monthly difference reports and take off interest at the policy loan rate. In these cases it would be 6 per cent. In all cases it would be more than 3, according to this evidence that we want to put in.

Now, that would mean, then, as to that man that more credits for the Government would have gone on the books than debits against the Government had gone on in the previous monthly difference reports, and all of those things would go on and on and on until the final time for settlement between the Government and the insurance company came, at which time the Government would pay the insurance company not by the policies but by the difference, the final difference reflected from all of these monthly difference reports, and if the thing had been figured out that way, Mr. Plesha and Mr. Kern and Mr. Mabbutt would have had more cred-

ited, would have had some of those extra credits come over and reduce their liabilities to the Government.

So what the thing comes to is this: that it would have been very, very difficult to try to figure out under that system of computation what the Government had paid on behalf [31] of Mr. Plesha and Mr. Kern and Mr. Mabbutt, because in order to figure that out you not only would have had to take into account the things that had gone into the monthly difference reports as far as they were concerned, but also what had gone into the monthly difference reports as far as everybody else who had a policy with Cal. Western who had applied for protection under the Act.

So the point that I will make there on argument is that if Congress had intended in the beginning, in 1940, that the men who applied for this protection be liable to the Government or to reimburse the Government in the event the Government had to pay the insurance company, then Congress necessarily would have had to put in some kind of machinery into the original Act to determine how you were going to arrive at the proper figure, because, as I say, having to take all of these other policies into account it would have been a very difficult thing to do.

Now, Congress did go into a great deal of detail as to accountings between the Government and the insurance companies. It said not one word about accountings between the Government and the servicemen who might be liable.

Now, the fact they didn't say anything about that, I believe, is a very strong argument that they did not intend at all that the servicemen be liable, because if they had intended they would have put in some additional language. [32]

The Court: May I ask you gentlemen whether you stipulate upon the facts in the dissertation by Mr. Schei, subject to the materiality and competency?

Mr. Lally: I believe the facts as Mr. Schei has represented them concerning the 1940 Act, the actual terms of it, and the terms of the 1942 Act and the option, all speak for themselves in the Act, as a matter of law. However, I believe that Mr. Schei has quite competently set them forth here in an understanding manner. As to whether or not it bore upon the congressional intent, it is our position that there is no doubt that Congress intended that these men repay it, and other factors show that, and we feel that this evidence that Mr. Schei is now offering, such as textbooks, is not competent to the determination of whether or not the Court could take judicial notice of those textbooks, which, of course, is in the Court's discretion.

The Court: Will you stipulate I may take that notice subject to the materiality of the evidence?

Mr. Lally: Also, your Honor, as to the best evidence of the particular fact. I don't think it is a matter of which the Court can take judicial notice.

The Court: Unless you agree upon the facts—I was trying to simplify it.

Mr. Schei: That was my desire. We have talked

about this thing and we have had two or three what I thought were [33] understandings, and then we find it just a little difficult to get to where we are going to go.

Mr. Byrd: If the Court please, if I may make a statement at this point, I would like to say that it was in conference yesterday, I believe, that Mr. Schei first suggested that there were issues of fact other than the pertinent records of the Veterans Administration with respect to the coverage afforded by the Soldiers and Sailors Civil Relief Act and the special dividends to which these parties might have been entitled had the Government not assumed the position that they were indebted to the Government, and therefore we are not, the Government is not, prepared to offer at this time any evidence with respect to the computation or the manner of computing that he has suggested here.

The Government has offered the statements of account of these individuals and which show for themselves the method employed and the rate of interest applied and the amounts determined, and those are definite figures.

Insofar as the provisions of the 1940 Act and the 1942 amendatory Act are concerned, as the United States Attorney has suggested, that is a matter of law. As to the effect of any conflict that there may be, that is a matter of law between the two and their application in this case.

We have advised opposing counsel, however, that if they offer to show that the computations made by the Veterans [34] Administration in these cases

were not correct, that the Government would have the opportunity to introduce any evidence at a later date, as soon as it could be made available, to rebut it.

Mr. Schei: Mr. Byrd is talking about something in addition to these insurance texts to which we were just referring, your Honor. Mr. Drummond from the California Western States Life Insurance Company has at my request made certain computations concerning—on certain assumptions concerning what the liability of these three plaintiffs would have been if their liability had been computed in accordance with the formula in the 1940 Act.

Now, as to that, I have told Mr. Byrd that we would certainly expect, if they wanted to submit those computations to mathematicians for any criticism, either as to the actual computations or as to the assumptions on which the computations were based, and also if they wanted to introduce evidence along those lines, they certainly should be able to do so, and I would have no objection to those coming in at a later time; but on the immediate problem that we were talking about here, there are two rather simple things which I think are well established in the insurance business, which we would like to have your Honor recognize.

No. 1 is that except in very unusual circumstances life insurance premiums, when they become due, are not a debt of [35] the insured to the insurer, and, No. 2, that throughout the insurance industry in 1939 and 1940 the rate of interest charged on policy loans exceeded 3 per cent.

Now, whether it was 4 per cent or 5 per cent or 6 per cent is immaterial to the point I am making. I just wanted—actually, as I understand it, according to Mr. Vance, the practice during 1939 and 1940 was 6 per cent or 5 per cent, one or the other. That is what was charged by all the big companies and the little ones, too.

Now, those are the only two facts, both of which are disclosed by Mr. Vance's work, and I found a statement to the same effect in American Jurisprudence, as far as opinions were concerned, and, to save time and to save bringing some people like Mr. Drummond or perhaps someone from the Insurance Commissioner's office here to testify to it, we thought your Honor could take judicial notice of well recognized texts in the field as to those particular things.

Mr. Lally: To which we object, your Honor, because we are not insurance people and we are not competent to enter into any such stipulation. If there is evidence to be presented that should be presented on the point.

The Court: Well, you are asking me to take judicial notice that I am not so sure I could take judicial notice of. If you can satisfy me it is proper to take judicial notice of it, I will do so. [36]

Mr. Schei: I did not bring along the little book from which I got these references, but as I understand the rule, the Court is authorized to take judicial notice of facts of general knowledge.

The Court: Yes, and that is a very, very vague rule.

Mr. Schei: Yes, it is.

The Court: And people get into argument right away as to some things that are said to be well known and understood. It may be something well known and understood in a particular technical field, but not to the layman.

Mr. Schei: Yes, that is true, your Honor. I think there are some cases that have gone into that, but I am not sufficiently familiar with them to attempt to quote them from memory.

Now, there is another way that we could approach this thing. If these gentlemen here would be willing to consider Mr. Dorety, who is an assistant—I don't know what his exact title is, but he is counsel for the California Western States Life Insurance Company, and his duties are to advise the company in connection with legal matters, if he has made a study personally of the practice of other insurance companies concerning premiums and concerning policy loan rates, maybe we could get at it that way.

Mr. Lally: Mr. Dorety can testify, but I still think he should be qualified if he is to testify as an expert. It [37] would also go to the weight of his testimony, your Honor.

The Court: That is under the assumption that he can qualify as an expert.

Mr. Lally: That is correct, your Honor.

Mr. Schei: We have talked about this several times, your Honor, and we have gotten a different answer every time as to just how far they would go with us. This is the least far that they would go.

Mr. Lally: I don't think that is a fair state-

ment, Mr. Schei. Just to keep the record straight, I think that is the position we have taken consistently since we started talking about this, that we couldn't stipulate to this, it was a matter of proof, you would have to prove it and we would object, enter our objections. Isn't that your understanding, Mr. Byrd?

Mr. Byrd: That is right.

Mr. Lally: I just want the record clear on that, Mr. Schei.

Mr. Schei: Well, I understood that you would object certainly to the materiality of it, and I understand that you do, but as to the facts, we did discuss whether the textbook was a proper way to do this, and as to that we decided that your Honor, of course, is the one to decide as to what he will take judicial notice of.

The Court: I told you what you might do. You might at least call to my attention the statements in the textbook and then fortify that with the authorities that the Court can [38] take judicial notice and if later on I conclude I cannot take judicial notice of it, then we can reopen to take proof along that line.

Mr. Schei: That will be fine if we can do that, your Honor.

The Court: Very well; that will be the understanding.

Mr. Schei: Because we can produce the evidence in the most formal way, if that is necessary.

The Court: Of course, there will be involved in that the materiality.

Mr. Schei: Oh, yes, certainly.

As to the fact that 3 per cent simple interest was the rate on which the Government would pay the insurance companies under the 1940 Act, the Act provided that the Secretary of the Treasury was to specify what that rate of interest was. The Secretary of the Treasury did specify; you have a copy of his letter, but not a properly authenticated copy of it; but after he had specified it the '38 Code of Federal Regulations, Section——

The Court: The Court will take judicial notice of that.

Mr. Schei: Yes. I am just bringing this to your attention, Section 1033.12 recites——

The Court: Anything that the Court can take judicial notice of you can call my attention to in the brief.

Mr. Schei: In the brief; all right. [39].

Mr. Byrd: If the Court please, just in order that there may be no misunderstanding, plaintiffs' counsel asked me a few minutes ago about the computations being made on the basis of the 1942 Act instead of the 1940 Act and asked me if I would agree. I want the record to show that I said nothing in response to that question, as I did not make the computation and I am not in a position to state what I did state to the Court later, that the computations are of record.

The Court: Can you determine that to your satisfaction as to how the computations were made?

Mr. Byrd: No, sir.

The Court: Why not? The Government should know how they made the computations.

Mr. Byrd: Yes, but I mean they were made by actuarial people.

The Court: Couldn't you get the information from them?

Mr. Byrd: Oh, yes. As I told your Honor a few moments ago, we intend to do just that, yes, sir.

The Court: Very well.

Mr. Schei: As to the computations of the 1942 Act, your Honor, the material which is in evidence will show pretty well how those were made. There is what they call a statement of account which shows the computation of the matter.

Now, we have left, so far as factual matters are concerned, the question of this Veterans Administration Form 9-430, which [40] I desire to have in the record because of the fact that certain portions of it were detached.

The Court: Well, counsel refuses to stipulate to that.

Mr. Schei: Yes, that is right. One of my points is Mr. Plesha is here and I can get his testimony on that, and also as to a statement that he received when he was notified that they had deducted monies from his accounts, from his dividends, so if I might now call Mr. Plesha.

The Court: Very well.

Mr. Schei: Come forward, Paul.

PAUL E. PLESHA

called for the plaintiffs; sworn.

Mr. Schei: Might this be marked Plaintiffs' Exhibit 4 for identification?

(A form of dividend application was marked Plaintiffs' Exhibit 4 for identification.)

Mr. Schei: And this one No. 5, please.

(Statement of Veterans Administration as to Plesha dividend account was marked Plaintiffs' Exhibit No. 5 for identification.)

Direct Examination

Mr. Schei: Q. Now, Mr. Plesha, you are one of the plaintiffs in this matter?

A. That is right. [41]

Q. And you were in the service of the United States during World War II? A. Yes, sir.

Q. And while you were in the service you had a policy of National Service life insurance?

A. Yes, sir.

Q. After you were discharged from the service you made application for a special dividend sometime in the month of December 1949?

A. That is right.

Q. I will show you here Plaintiffs' Exhibit No. 4 for identification and ask you to look at that form, please.

A. It looks like the same card we used.

Q. When you made your application to the Government for dividends it was on a form like this?

A. Yes, sir.

Q. Is this form, marked Plaintiffs' Exhibit

(Testimony of Paul E. Plesha.)

No. 4 for identification, different in any respect so far as you can tell from this?

A. Not that I can tell from that, no.

Q. Now, I will show you here Plaintiffs' Exhibit No. 1 and ask you to look at that.

A. That is my writing.

Q. Now, this is a portion of the form that you made out at the time you applied for the dividend, is that correct? [42] A. That is right.

Q. And that——

A. The bottom portion of this card, I believe this piece is the—this one, and this is the—the bottom section, that photograph was on one side.

Q. It doesn't show a photograph of the other side? A. Not of the other side.

Q. When you sent the form in in accordance with the instructions that it has on it, you detached——

A. That is right, the top section.

Q. ——the section that is immediately above that which shows Plaintiffs' Exhibit No. 1?

A. That is right.

Q. Now I show you, Mr. Plesha, Plaintiffs' Exhibit No. 5 for identification and ask you if you have ever seen that before.

A. Yes. I received that—when I received my dividend check it was in the mail with my dividend check showing why they had withheld part of the dividend check.

Q. And this form is entitled, "Statement of National Service Life Insurance Special Dividend Ac-

(Testimony of Paul E. Plesha.)

count, V.A. Form 9-1698, October 1949," and there is some printing over here on the reverse of that form, is there not? A. That is right.

Q. And this is the original of the form that you received? [43] A. That is right.

Q. With your dividend check, in the amount of $9.95, is that correct? A. Yes, sir.

Mr. Schei: I would like to offer these two exhibits in evidence at this time.

(Plaintiffs' Exhibits Nos. 4 and 5 for identification were received in evidence.)

[See pages 257-259.]

Mr. Schei: Do you wish to make objection to them?

Mr. Lally: Not at this time, other than the objection already made.

Mr. Schei: The usual objection as to the relevancy and materiality?

Mr. Lally: Yes.

Your Honor, Mr. Plesha is the plaintiff in this case, and there is in evidence certain documents which, of course, are signed by Mr. Plesha, and I would like an opportunity to ask him a few questions concerning part of the record that is already a part of this case. I don't know that it is in the scope of the direct examination of Mr. Schei.

The Court: Do you object on the ground it is not part of the scope of the direct examination?

Mr. Schei: I don't know what the questions are going to be, your Honor. As far as this record is concerned, I will be willing to stipulate wherever

(Testimony of Paul E. Plesha.)

it purports to bear Mr. [44] Plesha's signature that is his signature.

Mr. Lally: No, this concerns the circumstances surrounding the record, your Honor. Do you have any objection to my cross examining him——

The Court: I don't think it makes any difference. Counsel can call him as an adverse witness. He is the plaintiff.

Mr. Schei: Go right ahead.

Cross Examination

Mr. Lally: Q. These records, you testified, were identical copies. That is just to the best of your recollection, isn't it?

A. You are speaking of the long form, the long card?

Q. Yes.

A. I would say it is definitely, for this reason: Any other dividends that the Government paid out after the original one, no form was required for the veterans to complete, and I recognize the form as having seen it the first time, and I know there were no others after that.

Q. You aren't in a position to state that the Veterans Administration has not modified that form in any way over the years for people who wanted to get dividends, are you?

A. To my knowledge——

Q. To your knowledge you are not in a position to state whether they have or have not, are you?

A. That is right. [45]

(Testimony of Paul E. Plesha.)

Q. That is only to your recollection that it is the same form?

A. It is the same form to me, because it looks like the one that I filled out.

Q. Now, with reference to the insurance policy you had with the California Western States Life Insurance Company, do you remember when you took that policy out?

A. I believe it was in December of 1940.

Q. And you were in the military service at that time?

A. Just prior to my going into the service.

Q. Do you remember the date you went in the military service? A. March 3 of 1941.

Q. Now, it is true, is it not, Mr. Plesha, that you were during the summer of 1940 a member of the National Guard? A. That is right.

Q. And I believe you attended camp at Fort Lewis, Washington that particular summer, did you not? A. I believe that is right.

Q. And it is true also, is it not, Mr. Plesha, that you anticipated entering the service as a part of regularly recognized troops on active status from the time you were at summer camp to the time you went in?

A. The time wasn't definite. We knew that at some time in the future we were going in.

Q. You anticipated entering the active military service for [46] a few months, but didn't know at what particular time you would go in, between the

(Testimony of Paul E. Plesha.)

time you were at summer camp to the time you went in?

A. I would say from summer camp until January of 1951, I believe was the first date that we were told we might go.

Q. You had varying dates that you were to report, did you not, and the date was set back because of certain circumstances?

A. That is right.

Q. And the first date that you were to report was actually sometime in the fall, was it not?

A. I believe that is right.

Q. And that date was changed and you were to report at a later date and finally they did activate the National Guard regiment that you were a member of on March 3, 1941?

A. That is right.

Q. Now, will you state again, please, the date of your policy? I don't find that form.

A. December, I believe.

Q. Would it be December 6?

A. I can't remember the date.

Q. What is the date you paid the first premium on your California Western States life insurance policy? A. I can't say that.

Q. Do you know whether or not you paid a premium when you took that policy out or if the premium was paid at a later [47] date?

A. The premium was probably paid upon delivery of the policy to me, but I can't remember what time that would be.

(Testimony of Paul E. Plesha.)

Q. You have no recollection? A. No.

Q. I can understand that. It is a considerable lapse of time. Now, as to the circumstances, do you remember the name of the agent who sold you the policy? A. No, I don't.

Q. Can you tell me the circumstances under which it was purchased?

A. Well, all I recall of it was he came by the house one night and approached me on the purchasing of life insurance.

Q. Do you know whether he sold other members of the company, of your unit, at that time?

A. I have found out since then that he did.

Q. As a matter of fact, you found out, did you not, that he canvassed the unit?

A. I can't say that. I don't know.

Q. Now, can you tell me, please, just what your understanding was so far as the payment of premiums was concerned—we are speaking now with reference to the California Western States Life policy that you took in December of 1940 at a time when you anticipated momentarily entering the military service—what was your understanding when you bought that [48] policy with reference to premiums?

A. Well, I think—I think I know what you are getting to——

Q. Just answer the question, please, Mr. Plesha.

A. I see. About the premiums?

Q. Your understanding was that you were to pay the premiums on the policy, was it not?

(Testimony of Paul E. Plesha.)

A. That is right.

Q. There was no understanding that the Government was to make the payment of any part of those premiums, was there?

A. There was no talk of the Government coming in at all at the time.

Q. This policy was before you had any knowledge of the Soldiers' and Sailors' Civil Relief Act and its effect on the policy?

A. That is right.

Q. It was not taken out in contemplation of your entering the military service? A. No.

Q. With the idea that the policy premiums would be protected while you were in the military service? A. No, sir.

Q. That is not the fact, at least in your instance? A. That is right.

Mr. Schei: Might it be understood, your Honor, that I cannot see the relevancy or materiality of this line of [49] questions and that I will object and I do object to its admission upon the ground that it is incompetent, immaterial and irrelevant.

The Court: It is in now.

Mr. Schei: What?

The Court: I say, it is in now, the testimony is in.

Mr. Schei: Very well.

Mr. Lally: I have no further questions. Thank you, Mr. Plesha.

Mr. Schei: Is it out of order for me to make a motion that the testimony be stricken on the

ground that it is incompetent, irrelevant and immaterial?

The Court: Denied.

Mr. Schei: I would like to ask Mr. Drummond to come forward, please.

GLENN E. DRUMMOND

called for the plaintiffs; sworn.

Direct Examination

Mr. Schei: Q. Mr. Drummond, do you want to take with you the records that you have brought with you today? A. Oh,——

Q. What is your name, sir?

A. Glenn E. Drummond.

Q. And where are you employed? [50]

A. By the California Western States Life Insurance Company.

Q. And how long have you been employed there?

A. It will be twenty-five years March 1 of this year.

Q. You have been employed there steadily during that time? A. Yes, sir.

Q. And what is your capacity with the California Western States Life Insurance Company now, Mr. Drummond?

A. At the present time I am the assistant manager of the premium section department.

Q. And how long have you held that position?

A. Since May of 1942.

(Testimony of Glenn E. Drummond.)

Q. And prior to that time what sort of work were you doing with the company?

A. I was in the premium section department as a unit manager.

Q. Do you have any knowledge of some records in the files of the California Western States Life Insurance Company which are entitled "Monthly Difference Reports"? A. Yes, sir.

Q. Where are those records kept, if you know?

A. They are kept in the premium section department.

Q. And who has custody of them?

A. The premium section department has custoday and they are under my direct supervision.

Q. Did you prepare the monthly difference reports or have anything to do with the preparation of the monthly difference [51] reports submitted by the California Western States Life Insurance Company to the Veterans Administration prior to the time when you changed the method of preparation to that provided by the 1942 Soldiers' and Sailors' Civil Relief Act? A. Yes, sir.

Q. And you are familiar, then, with those forms and the method of their preparation?

A. Yes, sir.

Mr. Lally: Your Honor, I would like to enter an objection to the last question and answer as assuming a fact not in evidence, that they did change the method of computation. There has been no evidence in the case up to this time as to that.

(Testimony of Glenn E. Drummond.)

Therefore I move to strike the answer and object to the question.

The Court: It will go out.

Mr. Schei: Q. Mr. Drummond, I show you a photostatic copy of what purports to be a letter dated December 21, 1942. Have you ever seen that before?

A. I don't know that I have personally seen the letter before. I knew that such a letter was to be prepared.

Q. Do you have with you a carbon copy of this letter?

A. I do not have in my files, no, sir.

Mr. Schei: It appears that the matter that is holding us up, your Honor, is something I misunderstood. I have here a photostatic copy of a letter —a carbon copy of a letter, [52] the carbon copy from the files of the California Western States Life Insurance Company dated December 21, 1942 concerning the contention of that company to have the computations made in accordance with the 1942 Act.

The Court: That is directed to whom?

Mr. Schei: The Veterans Administration, Washington, D. C.

Mr. Dorety told me you have the original in reply to that; is that right?

Mr. Dorety: Mr. Drummond, I believe, has the copy of it. The original of the letter, of course, is in Washington, and our copy is in the original file, Mr. Drummond's file.

(Testimony of Glenn E. Drummond.)

Mr. Schei: Q. Did you bring with you the reply to this letter?

A. I have— The letter that I believe you are looking at, Mr. Schei, is not directly in reply to that. The letter that I showed you was an answer to an inquiry we had sent to the Veterans Administration for a supply of a certain Veterans Administration form, and in reply to that the Veterans Administration informed us that in view of the fact that we had returned our certificates we were no longer to be required to submit or prepare the report that we were requesting a supply of.

Mr. Byrd: If the Court please, if the officials of the California Western States Life Insurance Company are familiar with the matter and are prepared to show that they notified [53] the Veterans Administration of their desire to——

The Court: The witness said that he did not see the letter, but a letter of that import was sent and prepared.

Mr. Byrd: Well, your Honor, we might dispose of this matter in this fashion: that it is the present understanding of the officials of the Veterans Administration that the California Western States Life Insurance Company did elect pursuant to the provisions of the Act of October 6, 1942 to return the certificates which had theretofore been issued under the 1940 Act, and that in the event that I should find upon my return to Washington that that is not the truth we will set the record straight.

Mr. Schei: That is perfectly satisfactory. Does

(Testimony of Glenn E. Drummond.)

that obviate the objection to the question and answer you recently objected to, Mr. Lally?

Mr. Lally: It obviously does. It is in evidence now.

Mr. Schei: All right. May the question and answer stand?

Mr. Lally: I prefer that it be re-asked and re-answered so we will be sure about it.

Mr. Schei: Would the reporter read to the witness the question to which objection was made?

The Court: No, a motion to strike.

(The reporter read as follows: "Q. Did you prepare the monthly difference reports or have anything to do with the preparation of the monthly difference reports submitted by [54] the California Western States Life Insurance Company to the Veterans Administration prior to the time when you changed the method of preparation to that provided by the 1942 Soldiers' and Sailors' Civil Relief Act? "A. Yes, sir.

"Q. And you are familiar, then, with those forms and the method of their preparation?

"A. Yes, sir.")

Mr. Schei: Q. Now, do you have with you, Mr. Drummond, any of those monthly difference reports? A. Yes, sir. (Producing)

Q. Very well. These are carbon copies from the records of the California Western States Life Insurance Company? A. Yes, sir.

Q. Would you produce those, please.

(Testimony of Glenn E. Drummond.)

A. (The witness handed the documents to Mr. Schei.)

Q. Are these all of the monthly difference reports that were submitted?

A. They are copies of the monthly difference reports that were submitted by the company to the Government, yes, sir.

Q. You don't happen to have another set of those, do you?

A. No. I have a blank form. Does that serve your purpose? If those are to be submitted in evidence we prefer to substitute photostatic copies of them.

Mr. Schei: Q. Mr. Drummond, would you explain to the [55] Court how these reports were prepared and how the monthly difference was computed?

A. The Act, the original Act, provided that the insurance company would prepare a report, a monthly report, for the Government, listing policy numbers, names of insureds and premiums due when such premiums were in default, and this report was to be prepared during the first fifteen days of the month covering policies on which premiums were in default as of the end of the previous month, provided such premiums were in default for thirty days. And that was the basis on preparation of the monthly difference reports.

Q. Now, you showed, then, in one column the number of premiums that had become due during that period that you were talking about?

(Testimony of Glenn E. Drummond.)

A. Yes, sir.

Q. Now, you showed in another column certain credits against those amounts, did you not?

A. Yes, sir.

Q. And what sort of thing might be shown in the column that you might say would be a credit in favor of the Government?

A. The items we would show in that column would be the cash payments made by policyholders where perhaps we had reported premiums delinquent and subsequently the policyholder made a payment toward that premium that was reported as a credit to the Government. [56]

Q. Now, suppose one of the——

Mr. Lally: Your Honor, might I interject so there won't be any misunderstanding, I wish to object to the relevancy of questions pertaining to this document. I have been waiting to object to its introduction in evidence, but I understand from the proceedings here that will come later, but I feel that all these questions concerning it are irrelevant, incompetent and immaterial as to the issues of this particular case at hand. I don't know how your Honor wishes me to phrase it or to object to each question as Mr. Schei asks it or as to how——

Mr. Schei: I believe I stated earlier, your Honor, that I would be willing to stipulate that the objection to the relevancy, materiality and competency goes to all of this evidence of this general nature that I am introducing.

The Court: That is what I understood.

(Testimony of Glenn E. Drummond.)

Mr. Lally: I just wanted to be sure, your Honor.

Mr. Byrd: All legal objections.

Mr. Lally: All legal objections.

The Court: That covers a lot of ground.

Mr. Schei: I don't know that I could stipulate to that, your Honor.

The Court: Your objections so far have been limited to the competency, relevancy and materiality.

Mr. Lally: That is the specific objection, your Honor. [57]

Mr. Schei: Q. Now, suppose one of the persons whose life insurance with your company had been protected under the Soldiers' and Sailors' Civil Relief Act of 1940 had died, what were the instructions as to the adjustments that were to be made in that event upon this monthly difference report?

A. There is a column provided on the report where credits were to be entered, and there is one column—Did you wish me to read the heading of the column?

Q. If you would, please.

A. "Amounts paid during calendar month just ending on premiums previously reported in default, including premiums deducted from the proceeds of policies terminated by death."

There is also a column, the next column, in which a credit would be entered for the Government, "Interest collected on defaulted premiums paid and interest on premiums deducted from the proceeds of policies terminated by death."

(Testimony of Glenn E. Drummond.)

Q. When amounts were entered in those columns, those two columns that you just mentioned, they would in effect offset to the amounts entered in those columns the amounts that had previously been entered in the column for unpaid premiums, would they not? A. That is correct.

Q. And then over at the extreme right-hand side of that form there is a column to show the net difference? A. Correct. [58]

A. Yes, in the event that there were a debit and a credit on the same policy at the same time there is an extension column to show the difference.

Q. And then the total of all the individual debits and credits, you might call them, on one monthly report would be added up and a total monthly difference figure arrived at, is that correct?

A. Correct.

Q. And that figure would be shown where?

A. When these were submitted to the Government the totals were not put in by the company; they were audited and totaled by the Veterans Administration, and then when the audit had been completed it was certified for the issuance of certificates. That happens to be the total of one which was taken at random (indicating).

Q. This last thing that you are talking about is the Veterans Administration form No. 382, is that correct? A. That is correct.

Q. And in that form the Government takes your report, completes it and totals it, is that correct?

A. That is correct.

(Testimony of Glenn E. Drummond.)

Q. And then there is shown down here at the bottom of the page a total of the figures shown in column 9, which is the net monthly difference?

A. That is correct. [59]

Q. And when that figure was arrived at, then the Government would issue the insurance company a certificate for that amount, is that correct?

A. Yes, sir.

Q. Now, was it possible for the amount of credits in the Government's favor to exceed the amount of charges against the Government for unpaid premiums?

A. It would have been possible, but it didn't so happen in our case in the period we were submitting these monthly difference reports.

Q. Did you receive a letter from the Government concerning a possible negative difference in that respect?

A. There was an instruction later received by the company and there was one paragraph in the letter that covered that point.

Q. Do you have that instruction letter with you?

A. I don't believe I have it. I believe Mr. Dorety has it in his file.

(Mr. Dorety produced a document.)

Mr. Schei: Q. I show you a letter on the letterhead of the Veterans Administration in Washington dated October 24, 1941, addressed to California Western States Life Insurance Company——

The Court: How much longer will this take?

(Testimony of Glenn E. Drummond.)

Mr. Schei: Not very much longer. [60]

(Recess.)

Mr. Schei: I believe, Mr. Reporter, I was asking questions and beginning to present this letter to Mr. Drummond——

(Record read.)

Mr. Schei: Q. Have you ever seen that letter before? A. Yes, sir.

Q. That is a part of the files of the California Western States Life Insurance Company?

A. Yes, sir.

Q. That is an original letter?

A. Yes, sir.

Q. By whom is it signed?

A. Harold W. Breining, Assistant Administrator.

Q. That is on the stationery of the Veterans Administration? A. Yes, sir.

Q. And that contains, does it not, various instructions concerning the preparation of these monthly difference reports? A. Yes, sir.

Mr. Schei: Would you mark this, Mr. Reporter, please, as our exhibit next in order.

Might we have permission to offer a photostatic copy of the original?

The Court: You mean substitute a photostatic copy?

Mr. Schei: Substitute for the original.

Mr. Lally: No objection, your Honor. [61]

(Testimony of Glenn E. Drummond.)

(The letter referred to was marked Plaintiffs' Exhibit No. 6.)

[See pages 261-267.]

Mr. Schei: Q. Now, that letter contains, among other things, Mr. Drummond, instructions as to what to do in the event the amount of credits in the Government's favor in one month exceeded the amount of charges against the Government, isn't that correct?

A. Yes, sir, and there is a paragraph devoted to that.

Q. And what paragraph is that?

A. Paragraph 11.

Q. On page 3 of the letter?

A. It is on page 3 of the letter, yes, sir.

Mr. Schei: I don't imagine that it is necessary to read that at this time, your Honor.

The Court: Did you offer the letter in evidence?

Mr. Schei: I offered it in evidence, your Honor.

Mr. Lally: Subject to the same objection as we have stated, your Honor.

The Court: Yes.

Mr. Schei: Q. Now, the method of computing such charges as the insurance company might eventually have against the Government was changed, by election of your company, after the 1942 amendment to the Act. That has already been agreed to. Now, thereafter you did not prepare monthly difference reports any more, did you? [62]

A. No, sir.

Q. Did you go back to the beginning of the time

(Testimony of Glenn E. Drummond.)

when policies had been placed under protection and recompute the entire thing in place of a monthly difference report that had been previously submitted?

A. Yes. By our election to take settlement under the provisions of the 1942 Act, the basis of settlement would apply to all policies that had at any time been under the protection of the Act.

Q. Now, have you made at my request a computation of the amount that the Government would have paid to you on account of Mr. Plesha's policy with your company if the computations had been made in accordance with the procedure prescribed by the 1940 Act rather than in accordance with the procedure prescribed by the 1942 Act?

A. I have made such a computation on the basis of my understanding of the 1942 Act, yes, sir.

Q. And would you tell us, if you could, in some detail just what factors you took into consideration and just how you went about making that computation.

Mr. Lally: Might I be heard, your Honor? Is this being presented as expert testimony or as fact testimony? I am not quite clear.

The Court: Well, I take it it is the testimony of an expert. [63]

Mr. Lally: That is my understanding. Is that correct, it is testimony as an expert?

Mr. Schei: Do you want me to qualify the gentleman, or haven't I already?

Mr. Lally: If he is testifying as an expert, I

(Testimony of Glenn E. Drummond.)

thing he should be, because that goes to the weight of the testimony.

The Court: Then you should qualify him as an expert, his qualifications.

Mr. Schei: I have already to a certain extent, your Honor.

The Court: I don't think you have gone into his experience in accounting.

Mr. Schei: I believe the testimony will show already that he has been with the company for twenty-five years, that he has been in the premium collection department——

The Court: Q. Give us your qualifications in the line of work that you have told us you do.

A. Well, as I have stated, I have been with this company for it will be twenty-five years in March 1 of this year, and I started my employment in the accounting department of the home office of the Western States, which was one of the original companies of which the present company is the outgrowth. I worked in the auditing department when the auditing department was set up for the Western States.

In 1929 I was transferred to their Salt Lake branch office as their branch office cashier, and at that time our [64] company operated on the branch office plan.

In 1931 I was transferred to our Portland branch office as cashier of that office, where I stayed until 1936, when the company elected to close all branch offices as such and bring all premium collection

(Testimony of Glenn E. Drummond.)

matters and policy-owner service matters to the home office, and I have been in the home office in Sacramento here since 1936, and have worked in the premium collection and accounting department.

The Court: I believe the witness can testify as to the computation.

Mr. Byrd: Your Honor, do I understand that the qualifications stated by the witness qualify him to testify as to what the Government should have paid?

The Court: No, as to what he did.

Mr. Lally: And as to the computation only, not as to their materiality or anything else?

The Court: That objection still stands.

Mr. Lally: Very well, your Honor.

The Witness: I believe I stated that I made these computations on the basis of my understanding of the Act.

The Court: You may go ahead now and——

Mr. Schei: Q. Will you explain——

(Thereupon the Court took up another matter.)

Mr. Schei: Q. Will you explain how you made the computations, Mr. Drummond. [65]

A. Yes. I may state at the outset, however, that this computation is a computation of what we would have reported to the Government on monthly difference reports as a delinquent premium for this particular policy from the date the protection began to the date protection ceased.

(Testimony of Glenn E. Drummond.)

I have also made a calculation bringing that total up to a specific date, of January 25, 1949.

The reason I make that statement is that I am unable to say that this is exactly what the Government would have paid to us had we not elected to take the settlement under the 1942 Act, because the formula for the filing of statements under that act was never formulated, to my knowledge, as to just what the settlement date would have been, and I cannot say, because the original Act provided that settlement under the 1940 Act between the Government and the insurance company would be in one year after the Act ceases to be in force.

Q. And the reason for that—was that July 25 or January 25?

A. That was January 25, 1949, the date to which I brought the interest figure up.

Q. And what is the significance of that particular date?

A. In July 1947 the President issued an order or a directive that for the purposes of the Soldiers' and Sailers' Civil Relief Act that the war had terminated as of that date, and that under that declaration that the Act would then actually terminate six months thereafter, which would be in January of [66] 1948, and that since a settlement date with the Government, between the insurance company and the Government under the original Act would be one year after termination of the Act, that would bring the date to January 1949.

Mr. Lally: Your Honor, I haven't had an op-

(Testimony of Glenn E. Drummond.)

portunity to check the specific dates. I therefore interpose the objection. However, I believe the order is a matter that the Court can take judicial notice of.

Mr. Schei: Q. Did you take into account in making these computations any credits from policies other than those of Mr. Kern, Mr. Mabbutt and Mr. Plesha? A. No, sir.

Q. In other words, these computations that you have made here are made just as if these three people were the only insureds that your company was carrying under protection under the 1940 Act, is that right? A. Yes, sir.

Q. Now, you have a sheet here pertaining to the computations on Mr. Plesha, is that right?

A. Yes, sir.

Mr. Schei: Do you wish to look at this again, Mr. Lally?

Mr. Lally: I don't think it would do any good. I certainly can't understand it.

Mr. Schei: This sheet shows here——

The Witness: This is the computations in the settlement [67] that we actually made with the Government.

Mr. Schei: Over on the left-hand side the first one, two, three, four columns to the left of the drawn line here relate to the computations that were made under the 1942 Act, is that correct?

A. Yes, sir.

Q. And they show that the total amount of unpaid premiums was $343.93, that the cash sur-

(Testimony of Glenn E. Drummond.)

render value subtracted therefrom was $82.88, showing a difference there of $261.05?

A. That is correct.

Q. Now, the $261.05 is the amount that the Government actually paid to you on account of Mr. Plesha's policy, is that correct?

A. That is correct.

Q. Now, what have you done in the next three columns here?

A. In the next three columns—I have made a computation of the premiums that would have accrued and that we would have reported on a monthly difference report, and I have used the loan interest factor as provided by Mr. Plesha's policy.

Q. Which is what?

A. 6 per cent, compounded in advance, and arrived at the total amount of the premiums and interest at loan interest rate that would have accrued during the period that this policy was under protection.

Q. Up to what date? [68]

A. Up to the date of termination of protection.

Q. And what date is that that you have used in that particular portion of your computation?

A. In this particular portion I have used one year after the date of his release from service, which was the expiration of the protection period under the original Act.

Q. All right. Now, what do your computations show there as to the amount that that would have added up to?

(Testimony of Glenn E. Drummond.)

A. They indicate that a total indebtedness of $312.65 covering premiums and interest had accrued and that the cash value and dividend value at the expiration date was $65.75 for the cash value, $27.29 for dividends and interest, both being subtracted from the total indebtedness would have shown that a net was due of $219.61.

Q. In other words, computing the amount in this particular manner you get a result of $219.61 instead of a result of $261.05?

A. That is correct.

Q. Now, you have two more columns over here to the right. What do those represent?

A. They represent the premiums that we would have listed on our monthly difference reports from the date that the policy was placed under protection to the expiration date of the protection and I applied to that a 3 per cent simple interest factor, which is the interest that we would have received on [69] the certificates that the Government would have issued for those monthly difference reports had this been the only case on the report.

Q. And what does that show?

A. It shows that the total premiums were $253.86, interest at 3 per cent simple would total $25.05, making a total of $278.91, less the cash value of the policy, $65.75, and dividends and interest of $27.29, subtracted from the total of premiums and interest, leaving a balance of $185.87.

Q. Now, this last balance of $185.87 also car-

(Testimony of Glenn E. Drummond.)

ries the matter to one year after Mr. Plesha's discharge from service, is that correct?

A. That is correct.

Q. And the difference between that figure and the $219.61 figure is that here you have computed it at 3 per cent simple interest and there it was computed at 6 per cent compound; is that correct?

A. That is correct.

Q. Now, have you carried your figures forward to this date which was one year after the date when the Act would have expired by the presidential order you mentioned?

A. Yes, to January 25, 1949.

Q. And what figures do you have there?

A. The figure for the premium is the same, $253.86; the interest figure has increased to $42.29, making a total of [70] $296.15, less the policy cash value of $65.75, dividends and interest of $27.29, leaving the remainder of $223.11.

Mr. Schei: I ask that this paper that you have just been referring to in your testimony be marked by the Clerk as our exhibit next in order.

Mr. Byrd: It is understood, of course, your Honor, that the Government objects.

Mr. Lally: I might add in that regard, your Honor, that we have not been given any opportunity to gather any evidence of this type ourselves, inasmuch as this was just brought to our attention last evening.

The Court: It will probably require a continued

(Testimony of Glenn E. Drummond.)

hearing of the case and you will be afforded an opportunity to meet it.

Mr. Byrd: May we ask counsel if they can furnish us a copy of this for our examination so that we can meet it?

Mr. Schei: I think we should, your Honor.

The Court: You have a copy?

The Witness: No, sir, I do not, but one can very readily be made.

Mr. Schei: If this might be agreed, that this may be marked by the Clerk now as offered in evidence——

The Court: And I will let you withdraw it to make a copy of it and furnish it to the Government.

Mr. Schei: And I may do that at any time, your Honor? [71]

The Court: Yes.

Mr. Schei: Very well. I think for the purposes of clarity, I particularly wanted this one marked with a number so that it is clear as to what I was referring to from the reporter's record,——

The Court: Well, it is marked.

(Computations as to Plesha policy No. 419814 were marked Plaintiffs' Exhibit No. 7 for identification.)

[See page 268.]

Mr. Schei: (Continuing) ——for identification, and it is understood that I will prepare copies of this—prepare a copy of this and of all exhibits which are immediately to follow, which are of sim-

(Testimony of Glenn E. Drummond.)

ilar nature, and furnish a copy to Mr. Lally—Do you want two copies, Mr. Lally?

Mr. Lally: Please.

Mr. Schei: And then offer this in evidence subject to the objection that it is not material.

Mr. Lally: Subject to any objection, your Honor.

The Court: Now, wait a minute. "Subject to any objection"——

Mr. Lally: When it is offered in evidence aren't we then given an opportunity to object? It is not being offered in evidence at this time, your Honor. I don't know what objections might be pertinent until we have an opportunity to examine it.

Mr. Schei: I have no objection to their having an opportunity to examine it. [72]

The Court: I see that we will have to have a continued hearing on this case to voice your objections. I don't want a blanket objection on all grounds. That is not fair to the Court.

Mr. Lally: By the same token, your Honor, I don't want to stand by and let them go in evidence when I don't know what it is all about.

The Court: It is not in evidence; it is just marked for identification.

Mr. Schei: Will you mark these three next in order for identification.

(Computations as to Kern policies Nos. 428-642 and 395773, and Mabbutt policy No. 420558 were marked Plaintiffs' Exhibits Nos. 8, 9 and 10 for identification.)

[See pages 269-271.]

(Testimony of Glenn E. Drummond.)

Mr. Schei: Your Honor, I believe the pleadings and other records will show that the plaintiff Myron Kern had two policies under protection of this company, one in the face amount of $2000 and one in the face amount of $3000, and that the plaintiff James Mabbutt had a policy in the face amount of $2500 with this company.

Q. Now, I will show you Plaintiffs' Exhibit No. 8 for identification, Mr. Drummond——

The Court: Weren't those prepared in the same manner as the others were?

The Witness: Yes. [73]

Mr. Schei: That is just what I was going to ask.

The Court: And the testimony would be the same as you gave in connection with the questions as to No. 7?

Mr. Schei: As to No. 7.

The Witness: That is correct.

Mr. Schei: Except, of course, the figures read off——

The Court: Oh, yes.

The Witness: And the dates as far as the expiration dates.

The Court: But the explanation——

The Witness: The explanation would be exactly the same, yes.

Mr. Lally: The same objection, your Honor.

Mr. Schei: Plaintiffs' Exhibit No. 9 for identification refers to one of Mr. Kern's policies?

A. Yes, sir.

(Testimony of Glenn E. Drummond.)

Q. And Exhibit No. 8 for identification refers to another of Mr. Kern's policies? A. Yes, sir.

Q. And Exhibit No. 10 for identification refers to Mr. Mabbutt's policy? A. Yes, sir.

The Court: It is understood these are all offered in evidence and the ruling thereon will be reserved.

Mr. Schei: I will not leave them with the Clerk now, [74] but I will take them with me for reproduction.

Mr. Lally: I understand they are not being offered at this time; they are being marked for identification?

The Court: They are marked for identification. Have you identified them, Mr. Clerk?

The Clerk: Yes, they are all identified, for identification.

Mr. Schei: Q. Now, Mr. Drummond, have you checked the records of the California Western States Life Insurance Company to determine whether any of the policyholders of your company who had their policies protected under the Soldiers' and Sailors' Civil Relief Act of 1940 prior to its amendment died prior to the expiration of their service with the United States during World War II?

A. To my knowledge there have been none. I think that the policy payment department has furnished a letter to someone to that effect. To my knowledge there has been no death claim, because there was no death claim reported to the premium collection department, and we at no time showed

(Testimony of Glenn E. Drummond.)

a credit from a death claim on our monthly difference reports, so to my knowledge there was no death claim prior to the time the Act was amended in 1942.

Mr. Schei: Your Honor, I have a letter here from Mr. H. G. Hewitt, Second Vice President and Manager of the Policy Payment Department of the California Western States [75] Life Insurance Company, which is to the effect that he has checked these records concerning deaths of any of these policyholders, and that he has found that eight policyholders, with the policy numbers given in this letter here, died prior to the time their policies came out from under protection of the Soldier's and Sailors' Civil Relief Act.

Mr. Lally: This is a representation, is it not, rather than evidence?

Mr. Schei: That is right. That is right. I was wondering if we could have a stipulation that if Mr. Hewitt were called to testify that he would so testify?

Mr. Lally: I can't so stipulate, because these records are here in Sacramento and we can examine them, and if we were given an opportunity to examine them we could so stipulate, but I can't so stipulate when I don't know.

Mr. Schei: Very well. Might I ask, your Honor, that at the time this case is heard further we might have permission to recall Mr. Hewitt on that matter?

The Court: Yes, and I think perhaps if the

(Testimony of Glenn E. Drummond.)

records are available you might show them to Mr. Lally and he will stipulate to them.

Mr. Lally: That is my only thought, your Honor. I just don't like to stipulate to something that I don't know anything about.

Mr. Schei: Q. Have you made a computation concerning [76] what would have happened on a monthly difference report if the policy of a man by the name of Clover were considered?

A. Yes, sir.

Q. Do you have that with you?

A. (The witness produces a document.)

Mr. Schei: Do you wish to see this now (exhibiting document to counsel)?

Mr. Lally: Showing that to me now certainly doesn't help me, Mr. Schei, because it would take an actuary and graduate mathematician in order to understand that, and this is the first opportunity we have had to see it.

Mr. Schei: Copies of this will be furnished, your Honor, as soon as we have had it explained. Might I ask the Clerk to mark this as our exhibit next in order for identification?

(Computations as to Clover policy No. 422036 were marked Plaintiffs' Exhibit No. 11 for identification.)

[See page 272.]

Mr. Schei: Q. Now, I hand you Plaintiffs' Exhibit No. 11 for identification and ask you what that is, Mr. Drummond.

A. This is a computation similar to—not in all

(Testimony of Glenn E. Drummond.)

details—to the computations previously discussed covering the policy of one Glenn Clover, whose application for protection under the Soldiers' and Sailors' Civil Relief Act was approved by the Government effective in March 1951, which would have been the original Act. [77]

Mr. Clover, incidentally, is still in the service and his policy is still under the protection of the Act, and this computation is his indebtedness up to March 28, 1953.

Mr. Lally: Do I understand that the man is testifying to the fact that the man is still in the service and still under protection of the Act——

The Court: I take it that would mean according to his records.

Mr. Schei: Q. That would be your testimony?

A. That would be my testimony, that so far as our records are concerned, they show this man is in the service at present and his policy is receiving the protection of the Act, and based on the settlement as provided of the 1942 amendment. It is one computation.

Q. Yes. And you have shown what the total obligation of the Government to the company under the 1940 Act to date is as far as that policy is concerned under that particular——

A. Yes, under the 1940 Act and the 1942 amendment.

Q. Both ways? A. Yes, sir.

Q. Now, you have checked the records of the various policies of the California Western States

(Testimony of Glenn E. Drummond.)

Life Insurance Company which were under the protection of the Soldiers' and Sailors' Civil Relief Act prior to this amendment in 1942, is that correct? [78] A. Yes, sir.

Q. Now, were any of those policies reinstated by the man paying the back premiums when he came out of the service? A. Yes, sir.

Q. Have you any idea how many?

A. From a check that I made of those who were under the protection of the original Act, I can testify that there are thirty-eight of those where the policy owner either paid his premiums in cash to take care of his obligation or there was sufficient value in the policy to take care of them for him, so there was no reason for us to file a claim with the Government.

Q. Now, did you make any computations as to how the monthly difference report would have been affected by the death of one policyholder?

A. I have made a computation of the premiums and interest accumulation on one policy owner whose policy did become a claim.

Q. And do you have that with you?

A. (The witness produces a document.)

The Court: Mr. Schei, when I asked you how much more time this was going to take you said it would be very short.

(Discussion between Court and counsel as to length of time to conclude case.)

Mr. Schei: May this be marked, Mr. Clerk? [79]

(Testimony of Glenn E. Drummond.)

(Computations as to McDaniel policy No. 420358 were marked Plaintiffs' Exhibit No. 12 for identification.)

[See page 273.]

Mr. Schei: Q. Mr. Drummond, I hand you Plaintiffs' Exhibit No. 12 for identification and ask you what that is.

A. This is a computation that was made showing the total number of the premiums that were due and would have been reported to the Government under the 1940 Act from the date of protection to the date of death, increased by interest at 6 per cent, compounded, showing the total indebtedness that would have been deducted from the claim paid under this policy.

Q. And which particular policy does that relate to?

A. This is on one McDaniel, whose policy was placed under the protection effective in March 1941 and he died in February 1945.

Q. I hand you, Mr. Drummond, the file relating to Kern and ask you what that is.

A. This is our home office application folder covering this particular policy.

Q. And which policy is that?

A. Policy No. 395773 issued to one Myron Kern.

Q. On what date?

A. The policy was issued the effective date of December 31, 1938.

Q. And what was the amount of the policy?

A. The amount of the policy was $2000. [80]

(Testimony of Glenn E. Drummond.)

Q. Can you tell from that record, Mr. Drummond,—that is an original file record of the California Western States Life Insurance Company?

A. That is correct.

Q. Can you tell us from that record what form of policy was issued to Mr. Kern?

A. The plan of insurance was endowment at age 60, twenty premiums—do you want the form number of it?

Q. The form number of the policy, please.

A. The form number of the policy issued was 224-14. [81]

* * * * *

Mr. Byrd: Just a moment, your Honor, if I may. It is very unlikely that I will come back when the case is up again, and during the recess today I had an understanding with counsel for the plaintiff with reference to the statement on the stand —the statement that we didn't have to have testimony with respect to the special dividends and the fact that there is no disagreement that the Government applied the special [83] dividends which were withheld by transferring them to the appropriations of the Soldiers' and Sailors' Relief Act, the amount of dividends so applied by the Veterans Administration of the United States.

Mr. Schei: As I understand it, your Honor, and I certainly would be willing to stipulate if this is a fact, and you correct me if I am inaccurate, that the amount of the dividend to which each of these three gentlemen was entitled was computed, and

then offset against that was the amount that the Government had previously paid to the California Western States Life Insurance Company on account of the guarantee or whatever it was of these premiums, and that the balance, if any, was paid to these three plaintiffs.

Mr. Byrd: Yes.

Mr. Schei: I think in each case there was a balance. And further that difference—to be specific, in the case of Mr. Plesha in the amount of $221.25, was taken from the dividend fund of the National Service life insurance——

Mr. Byrd: Yes.

Mr. Schei: ——and applied to reimburse the Soldiers' and Sailors' Civil Relief fund for the amount that was taken out of that; is that correct?

Mr. Byrd: That is correct, and there is no dispute that these three plaintiffs were paid the difference?

Mr. Schei: They were paid the difference, that is correct.

(Thereupon the further hearing of this matter was continued until Friday, February 27, 1953, at 10:00 a.m.) [84]

* * * * *

MARCUS GUNN

called for the plaintiff; sworn.

Mr. Lally: First, your Honor, before Mr. Schei begins his questioning I would like to reserve the same objection we had heretofore as to the reception of all the testimony that has been presented, that we reserve as to each thing the objection of materiality, relevancy and competency, the thought in mind being that this whole trend that Mr. Schei is purporting to present is not actually appropriate to the issues of the case. [85]

I believe your Honor will recall when Mr. Byrd was here, and Mr. Schei and myself at the hearing the other day, we reserved our objections.

The Court: Very well.

Mr. Lally: It will be understood that the objection as to the relevancy, materiality and so forth is reserved.

Direct Examination

Mr. Schei: Q. Would you give us your name, sir? A. Marcus Gunn.

Q. And what is your employment, sir?

A. I am vice president and actuary of the California Western States Life Insurance Company.

Q. And how long have you held that position?

A. Oh, in excess of fifteen years. I have been either actuary or associate actuary for the Company or one of the constituent companies for twenty-eight and a half years.

Q. What formal education did you have, Mr. Gunn, prior to your employment?

(Testimony of Marcus Gunn.)

A. University of Oregon, four-year course in insurance and actuarial science.

Q. And when did you complete that education?

A. 1914, and then I pursued a formal course of study to become a Fellow of the American Institute of Actuaries, now the Society of Actuaries, and became a Fellow of the Institute in about 1920.

Q. Following the completion of your education would you tell us what experience you have had in the insurance business.

A. For the first ten years, with the exception of two years in the Army, I was in consulting actuarial work preparing policy forms, life insurance policy forms, and wrote books and doing other actuarial work for numerous smaller companies. Beginning in 1922 I was assistant actuary of the American Central Life Insurance Company of Indianapolis, and then joined one of our constituent companies, as we call them, in 1924, the Western States Life Insurance Company of San Francisco, as actuary.

Q. And you have been associated with either Western States Life Insurance Company or its consolidated company, California Western States Life Insurance Company——

A. California Western States Life Insurance Company.

Q. ——since 1924? A. Yes, sir.

Q. And you have been doing actuarial work during all of that time? A. Yes, sir.

Q. As a part of your work have your duties

(Testimony of Marcus Gunn.)

required you to examine and compare policy forms issued by various life insurance companies in the United States?

A. Yes. We have to keep informed generally on the wording and practices of our competitor companies. [87]

Q. And have you made examinations of various policy forms issued by other companies?

A. Over the years, yes.

Q. Would you say that you have examined policy forms from most of or all of the major companies?

A. More than half of the major companies.

Q. And will you name some of the companies whose forms you have examined.

A. New York Life Insurance Company, Metropolitan Life Insurance Company, Prudential Insurance Company, New England Mutual Life Insurance Company, Connecticut General Life Insurance Company, Pacific Mutual Life Insurance Company, West Coast Life Insurance Company, and numerous others.

Q. In your present position as vice president and actuary of the California Western States Life Insurance Company do you have responsibility for the form of policies which are issued by that company? A. Yes, sir.

Q. Such as the ultimate decision of the form of policies issued?

A. Yes, as to the wording. The policies are also

(Testimony of Marcus Gunn.)

reviewed and have to meet the approval of the legal department.

Q. Do you feel that you have a general familiarity with the provisions of the various life insurance companies in the United States concerning the method in which payments are to [88] be paid and how policy loans are to be handled?

A. Yes, sir.

Mr. Lally: Your Honor, I wish to move—just make an objection to the question as calling for an opinion and conclusion of the witness——

The Court: Overruled.

Mr. Lally: ——rather than whether or not he actually was cognizant of the fact.

The Court: Overruled.

Mr. Schei: Q. Now, in the year 1940 how did the policy forms of the various life insurance companies with which you are familiar cover the matter of the effect of the failure to pay premiums? Did such policies provide in effect that unpaid premiums would be a debt of the insured, or what was the provision in that respect?

A. In that respect there would be two classes of policies: those such as term policies, which had no cash or loan values, and all other individual life insurance policies which have loan and cash surrender values and other surrender values.

Q. Now, what would the provision of term insurance policies be with regard to the effect of failure to pay premiums?

A. If a premium due is not paid prior to the

(Testimony of Marcus Gunn.)

end of the grace period, ordinarily a month after premium is due the policy would terminate without value.

Q. In that form of policy, if the insured failed to pay [89] that premium would he become—under the language of the policies with which you are familiar, would he become liable personally to pay that premium to the insurance company?

A. No, sir.

Q. The effect, then, of failure to pay premiums under the term insurance policy was that the policy would lapse? A. That is right.

Q. Now, would you tell us what the effect of failure to pay premiums on these other policies would be, those which did have cash values.

A. In the event that any payment due on any such policy with loan values was not paid during the grace period, either before the due date or within the grace period of one month, ordinarily not less than thirty days after the due date, the policy would lapse, and if the insured did not make other selection, the value would be applied automatically to provide ordinarily an extended insurance value; although in some policies it is a paid-up insurance value for a reduced amount; in other policies there is what is called an automatic premium loan provision whereby a policy loan is automatically effected to produce sufficient proceeds to pay the premium, or in the event the insured makes a selection within a required period, or so elects

(Testimony of Marcus Gunn.)

within a stipulated time in the policy, he may take the surrender value, the cash surrender value.

Q. Then would it be accurate to say that the principal difference [90] so far as this application —I mean so far as the effect of failure to pay premiums is concerned, the principal difference between the term policies and these other policies that have cash value is that the cash values that are there may be used to give additional insurance for a period of time or may be paid to the insured? Is that generally correct?

A. Yes. I wouldn't say additional insurance. Sometimes it is a lesser amount, and sometimes—in the case of paid-up value and in the case of extended insurance value it is usually the face amount extended for a limited period.

Q. But continued failure to pay premiums on that type of policy having cash value would ultimately result in the policy being terminated or lapsing; is that correct?

A. Yes, sir. The usual language of the policy provides for the—in the case of the automatic premium loan—that is one situation that some—only part of the policies in force in the country generally have that provision—where that provision is included the successive premiums are added to the indebtedness until the time the indebtedness would equal or exceed the loan value of the policy, and at that time the policy would terminate without further value. In the event of the extended insurance option for the face amount, eventually the

(Testimony of Marcus Gunn.)

period of extended insurance would run out, although it may last for many years and then expire without value and without further insurance. [91]

In the case of paid-up insurance value, the paid-up insurance is for such reduced amount, ordinarily, as the value in the policy will provide for the original term of the policy in the reduced amount, and may run for the life of the policy—would run for the life of the policy in the case of a whole life policy, and run to the original maturity date in the case of an endowment policy.

Q. Now, with regard to the policies that would have cash value, are there any policy forms which make the payment of premiums an obligation—a personal obligation of the insured?

A. No, I have never heard of or seen a policy of any company that created such an obligation.

Q. Now, would the testimony that you have given here be substantially true today? I was asking you as of 1940. A. I understand.

Q. Have there been any substantial changes in these particular practices you have testified to?

A. No, sir, no substantial change.

Q. Now, in the period of ten years prior to 1940 would your testimony be any different if it were directed to that period of time?

A. No, sir, it would be the same.

Q. Now, I would like to ask you some similar questions about the provisions in the various forms of policies in the year 1940 so far as policy loans are concerned. Did most of the [92] policy forms

(Testimony of Marcus Gunn.)

with which you are familiar, other than term insurance now, have provisions in them with regard to the making of policy loans?

A. Generally all such policies, with rare exceptions, have provision for policy loans.

Q. Do those policy loan provisions fall into a pattern? I mean, are they ordinarily of similar character? A. Very much so, yes.

Q. Can you tell us what the ordinary or usual pattern for such a provision is?

A. They provide first for the deduction from proposed loan proceeds of any unpaid premiums or any past due interest on existing loans, and for the deduction of the amount of any existing indebtedness. Then they provide in the case of a great many companies for a deduction of interest on the current loan to the end of the current policy year.

Some companies, however, will not deduct the interest in advance and will collect it on the next anniversary date.

Loans provide for payment of interest annually thereafter either in advance or on a graduated basis at the end of each policy year, according to the general plan of the company in that respect. They all provide that if interest is not paid when due that it shall be added to the principal of the loan and thereafter bear interest in the same manner as the principal of the loan. They have a provision that when the indebtedness [93] equals or exceeds the loan value of the policy, which is ordinarily equal to the cash value, that if the interest

(Testimony of Marcus Gunn.)

and premiums then due have not been paid, so as to increase the loan value further, they provide that the policy shall terminate without further value.

Q. Now, the loan that could be made against the cash value of the policy or the loan value of the policy might be a cash loan, might it not? In other words, the insured might actually get some money from the insurance company?

A. Yes. And ordinarily a policy loan would be made for the purpose of furnishing cash loans to the insured.

Q. I believe you previously testified it might also be used for the purpose of paying premiums; is that correct?

A. Yes. It might be a loan requested by the insured to furnish proceeds just sufficient to pay the current premium due. That would be called ordinarily a premium loan. Then sometimes the loan is provided for by an automatic provision of the contract, so that in the case of failure to pay premiums the automatic loan provision takes effect and a loan is automatically made to produce proceeds to pay the premium.

Q. I believe you have already testified that if the loan were not repaid and the loan principal plus accrued interest came to the point where it would equal or exceed the loan value of the policy, that the policy then would be terminated. Now, would there be any other result of failure to pay that [94] loan? What I am getting at is, if the

(Testimony of Marcus Gunn.)

loan were not paid when due could the insurance company collect it from the insured?

A. No, I have never seen or heard of a policy or a life insurance company that created any obligation for the insured to make any payments in such event.

Q. Is there some language in the standard policy loan provisions, those that you are familiar with, something to the effect that the loan shall be on the sole security of the policy?

A. Yes, ordinarily there is language to that effect, a loan is made on the sole security of the policy.

Q. That particular language, would you say that is in general used in these policy forms that you have examined? A. Yes, sir.

Q. Now, again I have asked you about the practices of the year 1940. Have there been any substantial changes in those practices with regard to policy loan provisions since the year 1940?

A. There have not.

Q. And what about the ten years prior to 1940, was the matter handled differently in those policies during that period of time? A. No.

Q. Now, one other matter, Mr. Gunn, I would like to ask you [95] about. You have spoken of interest on these policy loans. I would like now to ask you what your knowledge is as to the rate of interest that was being charged for policy loans by the companies with which you are familiar in the year 1940.

(Testimony of Marcus Gunn.)

A. Usually 5 per cent per annum, by some companies payable in advance, by some companies payable at the end of each policy year. However, some companies were still charging 6 per cent and some —at least on their larger loans—were charging somewhat less than 5 per cent.

Q. Were there any that were charging as little as 3 per cent on policy loans?

A. No, I never heard of any rate under 4 per cent, and I would say that 4 per cent was extremely rare and only in very special instances.

Q. Now, what about the situation since 1940, has there been any substantial change in the rates of interest charged for policy loans since that time?

A. Not since 1940 that I have heard of. There was a change downward possibly during the previous decade. At that time interest rates came down generally, and many companies that had charged 6 per cent then reduced to 5 per cent. I am not prepared to give you the exact dates of those changes, but——

Q. Well, would there be any companies that are now charging as little as 3 per cent interest on their policy loans?

A. I am satisfied that there is no company in the business [96] charging interest as low as 3 per cent.

Q. And the trend generally that you have mentioned is to charge a somewhat lower rate of interest than was charged in years back, is that correct?

(Testimony of Marcus Gunn.)

A. The trend somewhat prior to 1940 was somewhat downward. Many companies from 6 per cent to 5 per cent, and some few companies from 5 per cent to, say, 4½ per cent or maybe as low as 4 on exceptionally large policy loans.

I am not prepared to testify in detail with respect to that.

Mr. Schei: I have no further questions.

Mr. Lally: No cross examination, your Honor.

Mr. Schei: Thank you very much, sir. Would it be satisfactory for Mr. Gunn to leave now, Mr. Lally?

Mr. Lally: I have no objection.

Mr. Schei: Thank you very much, sir.

I would like now to call Mr. H. G. Hewitt.

H. G. HEWITT

called for the plaintiff; sworn.

Direct Examination

Mr. Schei: Q. Would you give your name, sir?

A. H. G. Hewitt.

Mr. Lally: Your Honor, so that I might not be deemed to have waived any of our objections, I would like to again state [97] our position for the record as to this particular witness also.

The Court: Very well.

Mr. Schei: Q. What is your business, Mr. Hewitt?

A. I am vice president and superintendent or

(Testimony of H. G. Hewitt.)

manager of our policy payment division, California Western States Life Insurance Company.

Q. And how long have you held that position?

A. Oh, I think I was made vice president in about 1945 and I held the other position since about 1931.

Q. And how long have you been employed with the California Western States Life Insurance Company?

A. California Western States Life and its associate company, Western States Life, for twenty-nine years.

Q. Now, your duties include, do they not, the handling of death claims? A. They do, yes.

Q. And you are the person primarily responsible for the handling of death claims, is that correct? A. That is correct.

Q. How long has that been true?

A. Well, the entire period of time.

Q. Ever since 1931? A. 1931.

Q. Now, do you in your capacity as the manager of that department have custody of the records pertaining to death claims? [98]

A. I do, yes.

Q. And at my request have you checked through the death claims records of California Western States Life Insurance Company to see how many persons carrying life insurance with your company, whose policies of life insurance were protected under the Soldiers' and Sailors' Civil Relief Act of 1940 prior to its amendment on October 6, 1942

(Testimony of H. G. Hewitt.)

died during the period their policies were under protection? Have you made such a check?

A. Yes, I made such a check.

Q. And what were your findings?

A. Well, I found—I don't know how many cases there are, but I simply asked for them to find the number of cases which came—under which that situation existed, and I have eight cases here which came under the Soldiers' and Sailors' Civil Relief Act of 1940 and which were paid as death claims.

Q. Now, in all of those cases, those eight cases that you mentioned, were the policies placed under protection under the Soldiers' and Sailors' Civil Relief Act before October 6, 1942? A. Yes.

Q. They were approved for protection under that Act prior to October 6, 1942 by the Veterans Administration of the United States?

A. That is correct.

Q. That is true of all of those eight cases? [99]

A. That is true of all eight cases.

Q. And in addition all of those eight cases became death claims while the policies were still under protection? A. That is correct.

Q. Do you have a list there of those eight policies—— A. Yes.

Q. ——those eight cases? A. I have.

Q. Now, would you give us the policy number and the name of the first case on your list.

A. The number is 42 03 42, and the last name is Watson.

(Testimony of H. G. Hewitt.)

The next case is 42 03 58, and the last name is McDaniel.

The next one is 42 21 03, and the last name is Jensen.

The next one is 42 02 94, and the last name is Hansen.

The next one, 41 05 43, the last name is Moore, Jr.

The next one is 40 46 31, and the last name is Pollitz.

The next one is 42 03 14, and the last name is Cannings.

And the eighth case is 42 03 19, and the last name is Capps.

Q. Now, in each of those eight cases your company paid the face amount of the policy with some additions and deductions, is that correct?

A. That is correct.

Q. And would you take the first one in your list there—we won't go through all of these—and tell us how you arrived at [100] the amount that was actually paid to the beneficiaries named in that policy.

A. Well, the face of that policy was $2500. There were coupons and dividends for $25.56. There was a deduction of $192.62, or the amount which was deducted under the Soldiers' and Sailors' Relief Act of 1940, making a net of $2,332.94.

Q. This amount of $192.62 that you mentioned was for premiums which had become due on that policy since it was placed under protection of the

(Testimony of H. G. Hewitt.)

Soldiers' and Sailors' Civil Relief Act and prior to the death of the insured, is that correct?

A. That is correct.

Q. And was there any interest added to those premiums?

A. There was 6 per cent interest compounding annually.

Q. And that was in accordance with the policy loan provisions of that particular policy?

A. That is correct.

Q. And the amounts paid for the other seven cases that you mentioned were all computed in a similar manner, is that correct?

A. That is correct.

Q. And in each of those other seven cases there were amounts deducted from the amounts paid to the beneficiaries by reason of unpaid premiums and interest thereon, on those unpaid premiums, since the policy had been placed under protection under the Soldiers' and Sailors' Civil Relief Act, is that correct? [101]

A. That is correct.

Mr. Schei: In each case there was a similar deduction for that purpose.

I have no further questions. Any questions, Mr. Lally?

Mr. Lally: No questions, your Honor.

Mr. Schei: Thank you very much, sir.

Might this witness also be excused?

Mr. Lally: No objection.

Mr. Schei: I would like now to recall to the stand Mr. Glenn Drummond.

GLENN E. DRUMMOND

recalled for the plaintiff; previously sworn.

The Clerk: Let the record show this witness was heretofore sworn. His name is Glenn E. Drummond.

Mr. Lally: Might we reserve our same objection so far as this witness's testimony is concerned, your Honor?

Direct Examination

Mr. Schei: Q. Mr. Drummond, you are the same Mr. Drummond who testified here in this matter in the latter part of January of this year?

A. Yes, sir.

Q. Mr. Drummond, I have a copy of the transcript of your testimony at the prior hearing, and on page 51, line 6 and following, the following question was asked and the following [102] answer given:

"Q. And what is your capacity with the California Western States Life Insurance Company now, Mr. Drummond?

"A. At the present time I am the assistant manager of the premium section department."

Is that a correct statement of your position, sir?

A. It is the premium collection department.

Q. The word "section" should have been "collection"? A. "Collection."

Mr. Schei: There are, your Honor, several other places on that page where the same error appears. The proper name of the department where you are is the name "premium collection department," is that correct? A. Yes, sir.

(Testimony of Glenn E. Drummond.)

Q. Now, inviting your attention to your testimony transcribed on page 76, I asked you this question, beginning at line 8 on that page:

"Q. Now, Mr. Drummond, have you checked the records of the California Western States Life Insurance Company to determine whether any of the policyholders of your company who had their policies protected under the Soldiers' and Sailors' Civil Relief Act of 1940 prior to its amendment died prior to the expiration of their service with the United States during World War II?"

And your answer was: [103]

"To my knowledge there have been none. I think that the policy payment department has furnished a letter to someone to that effect. To my knowledge there has been no death claim, because there was no death claim reported to the premium collection department, and we at no time showed a credit from a death claim on our monthly difference reports, so to my knowledge there was no death claim prior to the time the Act was amended in 1942."

Now, the latter part of that question there referred to a period of time prior to the 1942 amendment to the Act, but my question was intended to cover the period of time when the policies were under protection.

A. Apparently I misunderstood your question. I answered on the assumption that you were asking, Were there any death claims settled prior to the enactment of the 1942 amendment?

Q. Your answer to that would be what?

(Testimony of Glenn E. Drummond.)

A. No, sir.

Q. And what about after that?

A. There were death claims reported and settled after enactment of the 1942 amendment on policies that had been protected under the original Act of 1940.

Q. All right. Thank you. Now, during your testimony before you had with you California Western States Life Insurance Company's copies of various monthly difference reports?

A. That is correct. [104]

Q. You have those with you again today?

A. Yes, sir.

Mr. Schei: Your Honor, we would like to put into the record a photostatic copy—we will introduce the original, and then if we may withdraw it and put in photostatic copies of one of these monthly difference reports.

Mr. Lally: Same objection, your Honor, as to the competency and relevancy and materiality.

The Court: What was the comment?

Mr. Lally: The same objection, your Honor, as to this document. I believe it has been the understanding a reservation as to the ruling on all this as evidence would be briefed, and I wanted to make my position clear before it is in evidence. Perhaps it could be marked for identification.

Mr. Schei: Would it be satisfactory if we considered the photostat as the original and have that marked, your Honor?

The Court: Yes.

(Testimony of Glenn E. Drummond.)

(The document referred to was marked Plaintiffs' Exhibit 13 for identification.)

[See page 274.]

Mr. Schei: Mr. Drummond, I hand you Plaintiffs' Exhibit 13 for identification, these two photostat sheets. Now, of what is that a reproduction?

A. A reproduction of the monthly difference report for the month ending July 31, 1942.

Q. And how, if you know, was that photostatic copy prepared? [105]

A. It was prepared from the original that I have in my file and it was prepared in our office today.

Q. Now, there are two sheets here. What are those?

A. The one with the heading, "Monthly Difference Report, Veterans Administration Insurance Form 382," is the face of the report, and the second sheet is the reverse side of the report.

Q. These are two sides of the same piece of paper?

A. Two sides of the same piece of paper, yes.

Mr. Schei: Would you like to compare these with the one from the file, Mr. Lally?

Mr. Lally: That is a document you furnished me, is it not?

Mr. Schei: Yes. That is this one (indicating).

Mr. Lally: No, I have no objection to the photostat being substituted in lieu of the original.

Mr. Schei: I was wondering, did you want to

(Testimony of Glenn E. Drummond.)

compare that with the one that is in the California Western States Life Insurance Company's files?

The Witness: It is only one piece of paper.

Mr. Lally: No.

Mr. Schei: I would like to offer this in evidence, your Honor.

Mr. Lally: Your Honor, could we ask that it be marked for identification rather than received in evidence, in view [106] of our objection?

The Court: Very well. I will rule on the admissibility later on.

Mr. Schei: It is understood, however, it has been offered?

The Court: Pardon me?

Mr. Schei: It is understood, however, it has been offered?

The Court: Yes.

Mr. Schei: Q. Now, we have previously shown you, Mr. Drummond, a number of calculations which you have prepared which have been marked for identification as Plaintiffs' Exhibits Nos. 7, 8, 9, 10, 11 and 12. You prepared all of those, did you not? A. Yes, sir.

Q. Would it be correct to say that the method of calculation used was the same as to all of them?

A. That is correct, with the exception of the different dates involved.

Q. And different people involved, different amounts of money?

A. Different people involved and different amounts of money and different dates.

(Testimony of Glenn E. Drummond.)

Q. But the system used in computing it was the same for all? A. Same for all, yes.

Q. They were all based on the same assumptions of fact so far [107] as the basic law is concerned, and so on? A. Yes, sir.

Q. I would like to offer these exhibits in evidence, your Honor.

Mr. Lally: I request the same thing, your Honor, that they be marked for identification.

The Court: They will be marked for identification and the ruling will follow later on.

Mr. Lally: One further thing, your Honor. As your Honor will remember, at the last time photostatic copies were made available to us. We have no quarrel with the mathematics, only an objection to the relevancy of these figures to the particular case at issue. The mathematics we concede to be correct.

The Clerk: Plaintiffs' Exhibits 7, 8, 9, 10, 11 and 12 for identification.

Mr. Schei: I have no further questions. Cross examine.

Cross Examination

Mr. Lally: First, your Honor, by cross examining the witness I want it clearly understood for the record we are not waiving the objections heretofore made. I don't like to be repetitious, but I have to be sure that these things are done in connection with my instructions, your Honor.

Q. Mr. Drummond, there are one or two things I wanted to ask you: Could you tell me, please,

(Testimony of Glenn E. Drummond.)

whether or not it is true [108] that the Government actually paid your insurance company the premiums which accrued on the policies of Mabbutt, Kern and Plesha, the plaintiff and the two plaintiffs in intervention in this case, whether or not it is true that the Government actually paid the company the premiums which accrued during the period that the protection was afforded by the Government, with the interest at the policy loan rate from their respective accrual dates?

A. Yes, they did, less a deduction for whatever value the policy had at the date of settlement.

Q. They actually paid them the premiums which had accrued during the protection period with interest at a policy loan rate of 6 per cent?

A. Yes, sir.

Q. And this is the same amount that the company carried on its records as the amount to be paid by the insured to the company, or charged against the policy as a loan—as a condition of continuing the policy; is that not correct?

A. That is correct.

Q. That is, to continue them in effect after termination of protection afforded them by the Government? A. That is right.

Q. I guess to put it a different way, Mr. Drummond, it is the amount that would be required by the company to be charged against the policy as a loan or paid if the man wanted to keep [109] the policy in effect?

A. Well, the amount that the Government paid

(Testimony of Glenn E. Drummond.)

to us is the amount that was in excess of the policy loan value.

Q. We are speaking now, though, of the amounts that were carried on your records as the amounts that had to be paid by the insured or charged against his policy as a loan if he wanted to continue his policy after the Government had canceled their protection, if he wanted to keep it in effect.

A. That is correct.

Q. And that is the same amount?

A. That is correct.

Q. The amount we spoke of just a moment ago?

A. That is correct.

Q. Now, these computations that have just been handed to the Clerk and marked for identification were all made on the basis of a certain assumed factual situation? A. That is correct.

Q. And also certain assumed legal conclusions?

A. Yes, sir.

Q. Particularly with relation to the rates of interest that were applicable in the case of each of the plaintiffs, the assumed legal conclusion as to the rate; is that not so?

A. I don't know that I understand what you mean.

Q. Well, perhaps I can cover it a little differently, Mr. Drummond. When you prepared these it was having in mind [110] certain legal conclusions with respect to the rates of interest that would be applicable, at certain rates of interest, assuming those to be the ones in point?

(Testimony of Glenn E. Drummond.)

A. That is correct. In other words, the loan interest rate as provided in the policy and a 3 per cent simple interest rate which was the rate that the Government was allowing on the certificates that were issued on the original value.

Q. Now, it is true, is it not, that settlements made by your company in the cases where certain people died were made on an individual basis at the request of the company?

A. At the request of the company?

Q. Yes. They made an election to treat these under an individual basis under the terms of Section 408 of the Act, did they not?

A. On the amended Act?

Q. That is right.

A. Yes. Well, every one was treated on an individual basis.

Q. So that all these people who died, any settlement made by the Government with respect to these particular people that died was done on an individual basis? A. That is right.

Q. Now, would you say that the company was paid by the Government more than it was entitled to on those particular cases treated on an individual basis? A. No. [111]

Q. They were paid at 6 per cent, were they not?

A. That is right, at the loan interest rate as provided in the policy, yes.

Q. Well, if the theory that is attempted to be advanced here today is true, the company would have been overpaid, would they not, if they had

(Testimony of Glenn E. Drummond.)

gotten 6 per cent from the Government on each of those on an individual basis?

A. No, I don't know that they would have been overpaid.

Q. They would have been overpaid at 6 per cent rather than 3, would they not?

A. Yes, but we are speaking of two different acts.

Q. Yes, I appreciate that, but treated on an individual basis they were straight 6 per cent, weren't they? A. Yes.

Q. Now, if we were to assume that they would all be under the 1940 Act, the company would have been overpaid, would they not?

A. No, because if we were still operating under the 1940 Act we would have given the Government credit for those premiums plus 6 per cent interest. They would have been credited back to the Government.

Q. I know the Act is quite complicated, but what I am trying to elicit, Mr. Drummond, is that the Act had it set up differently before it was amended. A. That is correct.

Q. And you people decided to treat your cases as under the [112] amended Act individually when you made settlement? A. That is right.

Q. And it was done at 6 per cent?

A. That is right.

Q. And if we are to accept the theory that is being advanced that the 1940 Act was the one to

(Testimony of Glenn E. Drummond.)

govern those cases, actually your company would have been overpaid, would they not?

Mr. Schei: Your Honor, I would like to object to that question as argumentative and uncertain. The witness can hardly be expected to testify as to what the legal theories are in this case. I think he has testified with clarity as to the manner in which the computation was made. I object to the question as being argumentative.

Mr. Lally: He is your expert; you brought him——

The Court: Overruled.

Mr. Lally: Q. You see what I am driving at, do you not, Mr. Drummond?

A. Yes, I see what you are driving at, with the exception that the company would not have received that, because while we were making deductions from the proceeds, we would have turned around and given the Government credit for them.

Q. But as a matter of actual fact, under the 1940 Act your company would charge the Government less, but in following the new amended Act they were able to charge 6 per cent; the company would actually have obtained more money, would they not? [113]

A. We would not actually have received more money.

Q. But you did if the applicable act was the 1940 Act and not the amended Act, then you would have gotten more than the company was entitled to.

A. But we would have in turn credited the Gov-

(Testimony of Glenn E. Drummond.)

ernment for that, so we wouldn't have gotten it; the Government would get it.

Q. But my point is that by collecting under the 1940 Act and saying that the 1942 Act was applicable would mean that the company would get more than it would have gotten had the 1940 Act been applicable rather than the amended Act.

A. I don't know that I can follow your question.

Q. Well, the computation as you have figured it out under the 1940 Act was almost incomprehensible as to how much they would have had to pay—in other words, that was the basis of your figuring, was it not, on the sheets of paper?

A. Yes.

Q. So if that amount that you attempt to show on those papers had been paid, it would have been a lesser amount than the 6 per cent, would it not?

A. No. Even under the original Act, assuming that there had been no amendment, in the event of a death claim we were to deduct from the proceeds of the death claim all the premiums that had not been paid, plus loan interest rate. That was the provision of the original Act.

Q. But I am talking now about these particular three [114] plaintiffs and their policies. They did not die. We are not concerned with them. We are concerned with the case where your company elected to treat each case individually and charge the Government 6 per cent, on an election granted them by the amended Act. You follow me there?

A. Yes.

(Testimony of Glenn E. Drummond.)

Q. Now, if you had not chosen to avail yourselves of that election and had chosen to treat them individually, you would have to have gone under the terms of the 1940 Act before amendment, wouldn't you? A. That is correct.

Q. All right. Now, if you had paid off under that 1940 Act—Pardon me. If the Government had paid you people off under the 1940 Act rather than under the amended Act, they would have paid you less money than they paid you, would they not?

A. That is correct.

Q. Now, they paid you 6 per cent when they paid you? A. Yes.

Q. Then your company then got more money than if they had been treated under the 1940 Act?

A. On those three individual cases, yes.

Q. On those three individual cases.

A. Yes.

Q. Did they ever complain to the Government that they had gotten more money? [115]

A. No.

Q. Pardon me? A. No.

Q. The company has never to your knowledge ever complained that 6 per cent paid to the company was more than the company was entitled to?

A. Not to my knowledge.

Mr. Lally: I believe that is all, your Honor. Thank you.

Mr. Schei: No further questions.

The Court: Is that all?

Mr. Lally: Anything further?

Mr. Schei: We have no more witnesses, your Honor, but we do have some additional documentary evidence we would like to introduce.

Mr. Lally: I believe you have the policies, do you not, Mr. Schei?

Mr. Schei: Yes.

The Court: I have to take up a criminal matter.

(Thereupon the Court took up another matter.)

The Court: Now I understand there is some documentary evidence you wish to offer?

Mr. Schei: Yes, your Honor.

The Court: All right, let's take it up.

Mr. Schei: It won't take very long. [116]

When we were here before in January, your Honor, we read into the record a portion of the policy of life insurance issued to the plaintiff Paul E. Plesha by California Western States Life Insurance Company on December 6, 1940, policy No. 419,814.

In the course of the discussion and on page 23 of the transcript error was made with regard to whether this policy had an automatic loan provision in it—in looking at the thing quickly I had thought that it did, but apparently the provision is slightly different. It is an automatic non-forfeiture provision.

To avoid any question as to what these policies actually do provide, and by agreement with the United States Attorney, I am going to offer all four of the original policies in evidence.

The Court: Very well.

Mr. Schei: And I ask that the policy just mentioned issued to Paul E. Plesha be marked Plaintiffs' Exhibit No. 14 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 14 for identification.)

Mr. Schei: I have here policy of life insurance issued to James E. Mabbutt, Plaintiff in Intervention, by the California Western States Life Insurance Company on December 12, 1940, policy No. 420,558, and I ask that be marked [117] Plaintiffs' Exhibit No. 15 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 15 for identification.)

Mr. Schei: I have here a policy of life insurance issued to Plaintiff in Intervention Myron Kern by the California Western States Life Insurance Company on December 21, 1938, policy No. 395,773, and I ask that that be marked Plaintiffs' Exhibit No. 16 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 16 for identification.)

Mr. Schei: I have here a policy of life insurance issued to the same man, Plaintiff in Intervention Myron Kern, by the California Western States Life Insurance Company on June 23, 1941, policy No. 428,642, and I ask that that be marked Plaintiffs' Exhibit No. 17 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 17 for identification.)

Mr. Schei: It may be, your Honor, that we will at some later date request permission to withdraw these original policies and substitute photostats.

May it be understood I have that permission? I will not do so at this time.

The Court: Yes.

Mr. Lally: We have no objection, your Honor.

Mr. Schei: And I would at this time like to offer these four exhibits, Nos. 14, 15, 16 and 17, in evidence. [118]

The Court: Received.

(The documents previously marked Plaintiffs' Exhibits 14, 15, 16 and 17 for identification were received in evidence.)

[See pages 275-287.]

Mr. Schei: Also to avoid any possible misunderstanding, I would like to make a formal offer in evidence of the written interrogatories, both the interrogatories and the answers which have been given to them. Those are plaintiffs' interrogatories. There were two sets of them, Mr. Clerk, the original set and then one set at some time later.

Mr. Lally: In that connection, your Honor, I would like to be sure that our position in regard to these is in the record, in that it will be clearly understood that our objections run to each of the answers collectively and separately and to the document as a whole, and that those questions will be ruled upon after having been briefed.

The Court: Very well.

Mr. Schei: I would like to make a similar offer in evidence of the written requests for admissions and the answers or admissions which were given in response thereto. There were also two sets of those.

Mr. Lally: I wish to make the same point there, that the ruling be reserved until we have had opportunity to brief that point, as agreed upon before.

The Court: That will be the understanding.

(The first set of interrogatories and the answers thereto were marked Plaintiffs' Exhibit No. 18 for identification; the second set, Plaintiffs' Exhibit 18-A for identification.

The first set of requests for admissions and the answers thereto were marked Plaintiffs' Exhibit No. 19 for identification; the second set, Plaintiffs' Exhibit No. 19-A for identification.)

Mr. Schei: And then to make sure that we have not neglected to offer each exhibit in evidence, I will hereby reoffer in evidence Plaintiffs' Exhibits 1 through 19-A, inclusive.

Mr. Lally: With the same reservation, your Honor.

Mr. Schei: That is understood.

Mr. Lally: Now I have obtained, your Honor, properly authenticated copies of the files of the Veterans Administration in Washington, D. C. dealing with cases that arose under the Soldiers' and Sailors' Civil Relief Act of 1918, and I wish to offer these, my thought being that they establish the administrative practice under that Act, which was the predecessor of the acts in question.

The Court: You are offering that as showing the administrative interpretation of the statute?

Mr. Lally: That is correct, your Honor, the statute that was the granddaddy, so to speak, of this statute that was in force during World War II.

The Court: I think it is appropriate to receive it for that limited purpose.

Mr. Schei: Your Honor, I wish to make an objection to the receipt of these on the ground that they tell only part of the story. If we are to have evidence as to the administrative interpretation of the 1918 Act we should have a more complete story than that that is presented in these cases—I believe there are nine files here, are there not, Mr. Lally?

Mr. Lally: Nine.

Mr. Schei: Now, I bring to your Honor's attention the fact that in administrator's decision, Veterans Administration No. 742 dated April 1, 1947, which will no doubt be mentioned in the briefs——

The Court: Let me say this to you, Mr. Schei: I don't know if there is any real need of offering this in evidence. The Court would take judicial notice of any act, rules and regulations of the administrative body which is called to my attention in the briefs. Anything pertinent on either side, do so.

Mr. Lally: Your Honor, I would like very much to have it a part of the record. It shows the administrative practice of the Veterans Administration.

The Court: I am going to receive it and it may be supplemented by anything you wish to call to my attention.

Mr. Schei: May it be understood, your Honor, that I will [121] have an opportunity to object on the ground it is incompetent, irrelevant and immaterial and on the further ground I have just stated, that they do not present a full picture of the ad-

ministrative practice under the Act. I will make those points in my brief.

The Court: I am going to receive it now for the limited purpose contained in the offer, with the understanding that you can supplement it in any way you see fit by any rules and regulations which in any way affect this.

Mr. Schei: Well, your Honor, I have no access to the records of the Veterans Administration. There are nine cases here. In the Administrator's decision they mention there are fourteen cases. Why we do not have the record of the other five, I do not know. In my interrogatories I asked them who were the fourteen people who were mentioned in this Administrator's decision.

The Court: Mr. Lally would be glad to supply that information for you if he has it, I am sure.

Mr. Lally: It is not available to me at the moment, but I will certainly try to get it for them.

(Photostatic copies of the files of the Veterans Bureau maintained in connection with administration of the Soldiers' and Sailors' Civil Relief Act pertaining to nine soldiers were marked Defendant's Exhibit K.)

The Court: Is that all? [122]

Mr. Lally: No, your Honor; there are a couple of more documents. I just want to be sure I have everything.

These were also documents, your Honor, that we overlooked at the time we introduced the other Veterans' Administration files pertaining to these people. They are properly authenticated copies and

we submit them with the same understanding with Mr. Schei, that he might also have an opportunity to object——

Mr. Schei: Might I also ask, Mr. Lally——

This last matter, your Honor, consists largely, I think, of the final report of the Civil Relief Section of the Insurance Division of the Veterans Administration. I don't have a copy of this report.

Mr. Lally: I don't have an extra copy of it. However, it will be available for your examination if you care to look at it.

The Court: It will be received with the understanding that if you would have any objections after you review it that you will specify your objections in the memorandum.

Mr. Schei: Very well, your Honor.

(The document referred to was marked Defendant's Exhibit L.)

[See pages 305-312.]

Mr. Lally: This is a document also a part of the Veterans Administration's records, the report of the Director—one particular page of the report of the Director of the Veterans [123] Bureau for the fiscal year 1924; it sets forth a document here also that Mr. Schei can object to after he has an opportunity to examine it.

The Court: Very well. The same order on that exhibit as made on the previous one.

(The document referred to was marked Defendant's Exhibit M.)

[See pages 312-313.]

Mr. Lally: There is another document here, your

Honor, from the Veterans Administration. It is a copy of a document containing 300 names, indicating the amount of dividends so far as Paul Plesha is concerned, and we ask that it be received with the same thought in mind——

The Court: The only part that is pertinent is the reference to Paul Plesha?

Mr. Lally: That is correct. It is a photostat of that page, your Honor, and then the other is a General Accounting Office document, and certain checks and certain supporting records identified here as D.O. voucher with a certain number issued in payment thereof, and certain schedules. They also, I believe, pertain to Plesha, and I ask they be admitted for identification with the same thought, your Honor.

The Court: That will be the order.

Mr. Schei: I can see no objection to those at the present time, your Honor, but I have not had the opportunity of examining them before. Might it be understood that I could [124] object if I wished to?

The Court: Yes.

(The documents referred to were marked Defendant's Exhibit N.)

Mr. Lally: We have one other document, your Honor, we would like to submit. An objection might be made to it at the same time.

Mr. Schei: I might point out that that particular one does not refer to any of these cases specifically, although by comparing the numbers it may appear that it does not.

(After examining documents) The same objec-

tion—or I mean, the same possibility of making objection.

The Court: Yes.

(The document referred to was marked Defendant's Exhibit O.)

The Court: Is that all?

Mr. Lally: That is all.

Mr. Schei: One other thing, your Honor: The last time I examined the answers to our interrogatories in the Clerk's office, there weren't attached thereto all of the exhibits which purported to be attached, and I would like it understood that if any of those are missing they will be supplied.

Mr. Lally: I feel sure all copies are attached to the answers. If they are not, we certainly will make them available. [125]

* * * * *

[Endorsed]: Filed November 5, 1953.

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PLAINTIFFS' EXHIBIT No. 1

1. First name—middle initial—last name: Paul E. Plesha.
2. Permanent mailing address: 314-26 Street, Sacramento, California.
3. County: Sacramento.
4. Service Serial No.: 20908010.
5. Branch of Service: Army. Enlisted: Yes.
6. Date of birth: June 18, 1920.
7. Insurance No.: N-192-72-54.
8. Claim No.:.....

9. Signature of Veteran or Serviceman: Signed Paul E. Plesha.

I certify that I am the veteran or serviceman whose name is shown in Item 1, and do hereby apply for any special dividend payable on my National Service Life Insurance, to be mailed to the address shown above.

3458 A06

[Return addressed envelope of Veterans Administration, Washington, D. C.]

3458 A06

Paul E. Plesha
314-26 Street
Sacramento 16, California

---

PLAINTIFFS' EXHIBIT No. 2

1. First name—middle initial—last name: Myron L. Kern.

2. Permanent mailing address: 128 Tapia Drive, San Francisco 27, Calif.

3. County: San Francisco.

4. Service Serial No.: Enlisted ASN 39012253; Officer 0-575188.

5. Branch of Service: USAAF.

6. Date of birth: Sept. 3, 1914.

7. Insurance No.: N-938477.

8. Claim No.: C-6555696.

9. Signature of Veteran or Serviceman: Signed Myron L. Kern.

I certify that I am the veteran or serviceman whose name is shown in Item 1, and do hereby apply for any special dividend payable on my National Service Life Insurance, to be mailed to the address shown above.

3482 A30

[Return addressed envelope of Veterans Administration, Washington, D. C.]

3482 A30

Myron L. Kern
128 Tapia Drive
San Francisco 27, California

---

PLAINTIFFS' EXHIBIT No. 3

1. First name—middle initial—last name: James E. Mabbutt.

2. Permanent mailing address: 1419 Oak Grove Ave., Burlingame, California.

3. County: San Mateo.

4. Service Serial No.: Enlisted 20900864; Officer D1336085.

5. Branch of Service: Army.

6. Date of birth: August 13th, 1922.

7. Insurance No.: V 1207 - 19 - 52, N 616 - 36 - 32, FN 47 - 26 - 19.

8. Claim No.: C-14511157.

9. Signature of Veteran or Serviceman: Signed James E. Mabbutt.

I certify that I am the veteran or serviceman whose name is shown in Item 1, and do hereby apply for any special dividend payable on my National Service Life Insurance, to be mailed to the address shown above.

2239 A30

[Return Addressed Envelope of Veterans Administration, Washington, D. C.]

2239 A30

James E. Mabbutt
1419 Oak Grove Ave.
Burlingame, California

PLFFS Ex. 4

## ACKNOWLEDGMENT OF SPECIAL DIVIDEND APPLICATION

NATIONAL SERVICE LIFE INSURANCE

**DO NOT WRITE TO THE VETERANS ADMINISTRATION CONCERNING YOUR APPLICATION, OR SUBMIT ANOTHER APPLICATION. SUCH ACTION WILL DELAY PAYMENT OF YOUR DIVIDEND.**

1. This portion of the form when returned to you with a Dividend Application Number assigned on the reverse side will serve as an acknowledgment. *Keep this card until you receive your dividend check.* Until payment has been made, the Dividend Application Number shown on the reverse side is the only means of referring to your application for dividends. This number has no other significance and should not be used in connection with any other correspondence with the Veterans Administration.

2. Payment of your dividend will be made only in cash. Your check for this dividend will be mailed to the address given in your application. If your mailing address changes before you receive your dividend check, leave a forwarding address with your postmaster. Any change of address which has to be made by the Veterans Administration in connection with this application will cause delay in paying the dividend.

***(DO NOT DETACH—Fold top portion back for mailing)***

No. 6326

RETURN TO PLFFS Exhibit No. 4

Filed JAN 23 1953

C. W. Calbreath, Clerk

By [signature] Deputy Clerk

PLACE ONE CENT STAMP HERE

[redacted]

VETERANS ADMINISTRATION, 9J
WASHINGTON 25, D. C.

VA FORM JUN 1949 9-430

## APPLICATION FOR SPECIAL DIVIDEND

NATIONAL SERVICE LIFE INSURANCE

This application to be used by veteran or serviceman only. This form is not to be used if veteran or serviceman is deceased or incompetent. See SPECIAL INSTRUCTIONS on reverse side.

**DO NOT WRITE TO THE VETERANS ADMINISTRATION CONCERNING YOUR APPLICATION, OR SUBMIT ANOTHER APPLICATION. SUCH ACTION WILL DELAY PAYMENT OF YOUR DIVIDEND.**

Read all instructions carefully before completing this form. The information requested is required to identify your National Service Life Insurance account(s) and to mail a check to you for the dividends earned. This dividend is payable on National Service Life Insurance only. This insurance was not issued before October 8, 1940. The dividend is not payable on insurance issued after December 31, 1947, or insurance which was in force less than 3 months.

● NAME AND SIGNATURE OF VETERAN.—Under item 9 sign your name in longhand (*do not print or type*) to correspond with your name as given in item 1. Use identical and exact name under which you served in the Armed Forces, unless the Veterans Administration has been furnished change of name.

● PERMANENT MAILING ADDRESS.—Furnish an address where mail will reach you for *at least the next 6 months*. If your address changes, supply your postmaster with a forwarding address. Any change of address which has to be made by the Veterans Administration in connection with this application will cause delay in paying the dividend.

● BRANCH OF SERVICE.—Enter the specific branch of service in which you served on and after October 8, 1940, such as Army, Navy, Marine Corps, Coast Guard, Philippine Army, U. S. Public Health Service, or Coast and Geodetic Survey.

● INSURANCE NUMBERS.—If known, list all your National Service Life Insurance policy numbers. If unknown, leave item 7 blank. Please *do not* write the Veterans Administration for unknown numbers.

***DO NOT ENCLOSE THIS FORM IN AN ENVELOPE***

***(Detach on this perforated line and retain the portion above)***

1. FIRST NAME—MIDDLE INITIAL—LAST NAME (*Type or print*)

2. PERMANENT MAILING ADDRESS (*Number and street or rural route, city, zone number, and State*) | 3. COUNTY

4. SERVICE SERIAL NO(S) (*Give all numbers assigned*) | 5. BRANCH OF SERVICE

ENLISTED | OFFICER | OTHER

6. DATE OF BIRTH (*Month — Day — Year*) | 7. INSURANCE NO(S). (*Include prefix N, V, or H*)

8. CLAIM NO. (*If any*)

C-

I CERTIFY THAT I AM THE VETERAN OR SERVICEMAN WHOSE NAME IS SHOWN IN ITEM 1, AND DO HEREBY APPLY FOR ANY SPECIAL DIVIDEND PAYABLE ON MY NATIONAL SERVICE LIFE INSURANCE, TO BE MAILED TO THE ADDRESS SHOWN ABOVE

***(DO NOT DETACH—Fold top portion back for mailing)***

No. 6326

RETURN TO PLFFS Exhibit No. 4

Filed JAN 23 1953

C. W. Calbreath, Clerk

By [signature] Deputy Clerk

PLACE ONE CENT STAMP HERE

[redacted]

VETERANS ADMINISTRATION, 9J
WASHINGTON 25, D. C.

VA FORM JUN 1949 9-430

***(Detach on this perforated line and retain the portion below)***

Budget Bureau No. 76-R189.
Approval expires 8-31-50.

## SPECIAL INSTRUCTIONS

IF VETERAN IS DECEASED this form will not be used. Beneficiaries currently receiving insurance payments or who have been paid completely will receive dividends without application. Other persons entitled to this dividend, accruing to deceased veterans, will be furnished forms direct by the Veterans Administration without request.

IF VETERAN OR SERVICEMAN IS INCOMPETENT.—The guardian or fiduciary should apply by letter, addressed to Special Dividend Applications Unit, Veterans Administration, Washington 25, D. C., including the veteran's or serviceman's name, date of birth, serial number(s), claim number, and insurance number(s), and the applicant's name, address, and official capacity in relation to the veteran or serviceman. If proof of official capacity has been submitted to a Veterans Administration Office, please supply the location of that office.

PENALTY.—The law provides that whoever makes any statement of a material fact, knowing it to be false, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than a year, or both.

U. S. GOVERNMENT PRINTING OFFICE 60—68—16—52071-1

changes, supply your postmaster with a forwarding address. Any change of address which has to be made by the Veterans Administration in connection with this application will cause delay in paying the dividend.

policy numbers. If unknown, leave item 7 blank. Please *do not* write the Veterans Administration for unknown numbers.

***DO NOT ENCLOSE THIS FORM IN AN ENVELOPE***

***(Detach on this perforated line and retain the portion above)***

1. FIRST NAME—MIDDLE INITIAL—LAST NAME (*Type or print*)

2. PERMANENT MAILING ADDRESS (*Number and street or rural route, city, zone number, and State*) | 3. COUNTY

4. SERVICE SERIAL NO(S) (*Give all numbers assigned*) | 5. BRANCH OF SERVICE

ENLISTED | OFFICER | OTHER

6. DATE OF BIRTH (*Month — Day — Year*) | 7. INSURANCE NO(S). (*Include prefix N, V, or H*)

8. CLAIM NO. (*If any*)

C-

I CERTIFY THAT I AM THE VETERAN OR SERVICEMAN WHOSE NAME IS SHOWN IN ITEM 1, AND DO HEREBY APPLY FOR ANY SPECIAL DIVIDEND PAYABLE ON MY NATIONAL SERVICE LIFE INSURANCE, TO BE MAILED TO THE ADDRESS SHOWN ABOVE

9. SIGNATURE OF VETERAN OR SERVICEMAN (*Do not print*)

***(Fold this side in. Place stamp on reverse side and mail without fastening)***

VETERANS ADMINISTRATION
WASHINGTON 25, D. C.

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300
(GPO)

DIVIDEND APPLICATION NO.
(*To be furnished by VA*)

**Print your name and address on this Acknowledgment Card**

(Name)

(Number and street)

(City) (Zone number) (State)

60—68—16—52071-1

RFFA Ex. 5

# STATEMENT OF NATIONAL SERVICE LIFE INSURANCE SPECIAL DIVIDEND ACCOUNT

| NAME | | ACCOUNT NUMBER | GROSS DIVIDEND | DEDUCTIONS | |
|---|---|---|---|---|---|
| P E PLESHA | | N 1927254<br>C 6546188 | 23100 | | 22105 |
| $ 9.95 | N 1927254 | | 23100 | | 22105 |
| ↑ AMOUNT OF YOUR CHECK (TOTAL DIVIDEND FOR ALL POLICIES LESS DEDUCTIONS IF ANY). | ↑ THIS IS YOUR INSURANCE FILE NUMBER. PLEASE USE THIS NUMBER IN ANY CORRESPONDENCE ABOUT YOUR DIVIDEND PAYMENT. | ↑ ACCOUNT NUMBER RELATING TO AMOUNT SHOWN ON SAME LINE. | ↑ DIVIDEND FOR EACH POLICY AND TOTAL DIVIDEND BEFORE DEDUCTIONS. | ↑ PREMIUM SHORTAGE OR LIEN ON YOUR INSURANCE AND TOTAL. | ↑ UNAUTHORIZED PAYMENTS MADE TO YOU IN CONNECTION WITH VETERANS BENEFITS AND TOTAL. |

VA FORM 9-1698 OCT. 1949

SEE OTHER SIDE FOR FURTHER INFORMATION

## IMPORTANT MESSAGE - READ CAREFULLY

• AMOUNT OF YOUR CHECK - This amount is the total of dividends on all your policies, less deductions (if any) of amounts owed by you for insurance premium shortage or lien or unauthorized payment of a veterans benefit.

• INSURANCE FILE NUMBER - Please use this number in any correspondence about your dividend payment to assure a prompt reply to your letter.

• ACCOUNT NUMBER - The account numbers with the letters N, V or H are your insurance policy numbers. An account number with the letter C is your Veterans Administration claim number.

• DIVIDEND FOR EACH POLICY - The individual amounts are the dividends for each of your policies, with the total shown as the last amount. On the same line with each individual amount is shown the number of the policy on which the amount is payable. If the figures 0.00 are shown beside a policy number, the policy is not eligible for a Special Dividend. If you have reduced the face amount of a policy, two or more amounts of dividend are shown for that policy — one amount for the dividend at each face amount of insurance. The number of that policy will appear on two or more lines, opposite the amount of dividend for each face amount of insurance. Please address any questions about these amounts to the Veterans Administration office which maintains your *insurance records* giving the insurance file number shown on the face of this statement. The code number for this office appears to the left of the word "Pay" on your check and the address of this office is shown on the enclosed slip, opposite the code number.

• INSURANCE PREMIUM SHORTAGE OR LIEN - This amount was withheld from your dividend to pay a premium shortage or liens on your insurance. On the same line with the amount is shown the number of the policy on which the amount is owed. Please address any questions to the Veterans Administration office which maintains your *insurance records*, as indicated on the enclosed slip, giving the insurance file number shown on the face of this statement.

• UNAUTHORIZED PAYMENT OF VETERANS BENEFITS - This amount was withheld from your dividend to repay the amounts of a payment (or value of a service) made to you in connection with veterans benefits in excess of your entitlement. On the same line with the amount is shown your Veterans Administration claim number (if any), under which the unauthorized payment was made. If you have already paid all or a part of this amount, a refund will be made of the balance due by the Veterans Administration Regional Office which maintains your *claim records*. Please address any questions regarding deductions on account of unauthorized payment of veterans benefits to the Veterans Administration office which maintains your *claim records*, giving your claim number, as shown beside the amount of deduction, to assure prompt reply to your letter.

## PLEASE GIVE YOUR INSURANCE NUMBERS AND SERVICE SERIAL NUMBERS IN ANY CORRESPONDENCE ABOUT YOUR DIVIDEND

## PLAINTIFFS' EXHIBIT No. 6

[Veterans Administration Letterhead]

In reply refer to: FBE October 24, 1941

California-Western States Life Insurance Co.
California State Life Building
10th and J Streets, Sacramento, California

Gentlemen:

It is requested that the following instructions be observed in the handling of all matters relating to the Monthly Difference Report (Insurance Form 382) described in Section 406 of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940.

1. Within the first fifteen (15) days of each month the insurer will list in a report, using form identified as "Monthly List of Applications" (Insurance Form 382a), the policies, by name of insured, number and amount, on which applications for benefits were received during the previous calendar month. A supply of the Form 382a is enclosed.

2. Within the first fifteen (15) days of each month the insurer will list in a report using the form identified as "Monthly Difference Report" (Insurance Form 382), hereinafter referred to as "Report", the policies on which the premiums remained unpaid on the last day of the preceding calendar month if said last day was at least thirty-one days after the due date of the premium and on which the Home Office has not received a notice of rejection for protection under the provisions of

Plaintiffs' Exhibit No. 6—(Continued)

Article IV. The Report will be identified as the report for the month preceding the month in which it is verified and submitted. The premium on an annual basis will be charged against the Government in column 4 of the Report.

3. It will be the responsibility of the insurer to list policies and enter the amount of premiums due thereon when properly chargeable. When because of some undue delay in the receipt of an application by the insurer or for any other reason the premium on a policy is found to have been in default more than thirty-one days on the last day of a month for which a report has been previously submitted, the policy will be listed and charged for on the next Report and the practice heretofore in effect, of submitting supplemental reports for previous months, is discontinued.

4. If a premium is charged against the Government in column 4, on which there is also a credit due the Government that became available during the Report month (such as a dividend or cash payment), the amount of the credit will be entered in column 5 and any interest received by the insurer will be entered in column 6.

5. After a premium on a policy has been charged against the Government in column 4 and thereafter a dividend, cash payment, or other credit is to be entered in behalf of the Government, the amount thereof will be entered in column 5 (interest, if any, in column 6) of the Report for the month in which the credit first became available.

Plaintiffs' Exhibit No. 6—(Continued)

6. The Veterans Administration hereby approves the disposition of any dividend which is available as paid-up insurance or is to be applied to the purchase of paid-up additional insurance, or placed on deposit, and no mention thereof will be made in the Report. However, this office should be informed by a copy of the dividend notice, or by a statement, or otherwise as to each policy on which a dividend is so applied.

7. If the protection of a policy under the Act is terminated by death, surrender, withdrawal, or otherwise and not by the provision of Section 410, the insurer will make settlement with the beneficiary or other person entitled to the proceeds thereof in accordance with its usual procedure in the handling of such matters. The settlement will include interest on the amount of the premium on an annual basis for the period from the due date of each premium to the date of termination. A report of settlement will be made as to each policy and will show the amount and date of each payment received by the insurer for the period the policy was protected by the law, the amount representing unearned portion of the annual premium, the rate and amount of interest charged or allowed, and all other essential information.

When termination is by death or surrender:

(a) If the insurer deducted the amount of an annual premium, with interest from the due date to date of termination at the rate fixed for policy loans (R-3307(d) of the regulation), then the in-

Plaintiffs' Exhibit No. 6—(Continued)

surer will enter the amounts so deducted in columns 5 and 6 of the Report for the month in which the action is taken.

(b) If the insurer deducted the amount of premium on other than an annual basis, with interest on the amount from the due date to date of termination at the rate fixed for policy loans (R-3307(d) of the regulation), then the insurer will enter the amounts so deducted in columns 5 and 6 of the Report for the month in which the action is taken. Also, there will be entered in column 5 as a separate item, the difference between the amount so deducted and the annual premium.

8. Amounts due the United States from the cash surrender value of policies terminated under Section 410 of the Act will not be included as items in the Monthly Difference Report. A separate statement for each policy in all such cases will be submitted to the Veterans Administration at the time of termination, setting forth all debits and credits, the rate of interest charged or allowed, and all other essential information.

9. In the Report under column 7 are to be entered the premiums on policies charged against the Government in column 4 of a former Report because the policy has now been rejected by this office. It is the intention of this office to take final action (approve or reject) on each policy listed in a Report before approving the audit thereof and prior to issuing a certificate (Form 388) to insurer covering the amount of the indebtedness due by the

Plaintiffs' Exhibit No. 6—(Continued)

Government as shown thereon. However, there may be errors or other action to be corrected that would bring about the rejection of a policy that had previously been approved for protection under the law. Under such circumstances it is necessary to enter the amount of premium on the policy under column 7 of the Report for the month in which the action is taken.

10. The credits entered in columns 5, 6 and 7 of a Report will be summed up in column 8. The total of column 8 will be deducted from the total of column 4, and the difference will be entered in column 9. The sum denominated as the monthly difference and entered in column 9 will upon approval after audit by the Veterans Administration, be the amount of the certificate for that month. All certificates hereafter will be issued effective the first day of the month following the month of the report as defined in paragraph 2 hereof, and all certificates heretofore issued will be reissued accordingly.

11. There will be Reports in which the credits as shown by the total of column 8 are greater than the debits as shown by the total of column 4. In that event there will be a minus difference in column 9, the same being the amount due the Government and necessitating the recall of a previously issued certificate for reduction in amount to effect an adjustment in the balance then due the insurer. The new certificate will be issued by this office for an amount sufficient to cover the reduced indebtedness plus simple interest at the rate of 3% on the minus

Plaintiffs' Exhibit No. 6—(Continued)

difference as shown in column 9 from the interest date of the recalled certificate to what would otherwise be the interest date of the certificate for the month of the Report. The amount of such interest will be discounted at the rate of 3% to the interest date of the new certificate, and will be entered by the Veterans Administration in column 9 of the Report. The new certificate will be issued under a new number and will bear interest from the interest date of the recalled certificate. The amount of the new certificate may be expressed by the formula A-B (1+.03xn/12)-1 where A is the amount of the previously issued certificate, B the amount of the minus difference, and n the number of months elapsed between the two reports.

12. The insurer, in preparing a Monthly Difference Report, may group the policies by classes—as ordinary life, intermediate, and industrial, and will list alphabetically the names of insureds under each class. If a report consists of two or more sheets of Form 382, a recapitulation may be made on the last sheet. It is not necessary that the total be brought forward from preceding sheets or that each sheet of a report be signed. The statement on the reverse side of Form 382, entitled "Verified by Insurer", on the last sheet of the ribbon copy and one carbon copy of the report may be executed if proper reference is made to the number of sheets of Form 382 that constitute the report.

The foregoing supersedes any and all instructions in conflict herewith which have been heretofore is-

Plaintiffs' Exhibit No. 6—(Continued)

sued to you by correspondence or otherwise from this office on the subject. Beginning with the month of November, please submit a list of policies as set out in paragraph 1 hereof. Kindly submit your Monthly Difference Report (Form 382) for the month ending October 31, 1941 within the first fifteen (15) days of November, in accordance with the procedure herein outlined for your information and guidance.

Your Monthly Difference Reports (Form 382) for the months prior to November will be examined and audited by this office as promptly as possible. The certificates (if any) previously issued should be returned and new certificates conforming with the procedure outlined in paragraph 10 will be issued.

Your usual generous cooperation in the handling of this task will be appreciated.

Very truly yours,

/s/ HAROLD W. BREINING,
Assistant Administrator

Pltfs. Ex. 7 for Id.

Policy #19814 - Paul Pleska - Protected eff 3-6-41 - Released from service 10-20-45

| Due date | Premium Amount | Interest 6% Compound in advance | Total Surrender Value | Premium Amount | Interest 6% Compound in advance | Total Accum | Premium Amount | Interest 3% Simple |
|---|---|---|---|---|---|---|---|---|
| 3/6/41 | 4513 | 288 | 4801 | 4513 | 288 | 4801 | 4513 | 5 yrs |
| 10/6/41 | 490 | 07 | 4304 | | | | | |
| 3/6/42 | 4513 | 563 | 9380 | 4513 | 595 | 9909 | 4513 | 4 yrs |
| 10/6/42 | 503 | 08 | 8869 | | | | | |
| 3/6/43 | 4513 | 854 | 14536 | 4513 | 971 | 15343 | 4513 | 3 yrs |
| 10/6/43 | 488 | 07 | 13741 | | | | | |
| 3/6/44 | 4513 | 1165 | 19419 | 4513 | 1167 | 21173 | 4513 | 2 yrs |
| 10/6/44 | 490 | 07 | 18917 | | | | | |
| 3/6/45 | 4513 | 1496 | 24931 | 4513 | 1636 | 27277 | 4513 | 1 yr |
| 10/6/45 | 495 | 08 | 23428 | | | | | |
| 3/6/46 | 4513 | 1847 | 30788 | 2821 | 1179 | 31165 | 2821 | 7 mos. 15 days |
| 10/6/46 | 498 | 08 | 30285 | | | | | |
| 3/6/47 | 2821 | 1190 | 34393 | | | | | |
| 10 Policy Incl. | | | | | | | | |
| Totals | 26935 | 7458 | 34393 | 25386 | 5879 | 31265 | 25386 | |
| | | Less Cash Value | 8288 | | Less Cash Value | 6575 | 2031 | Interest to 3/6/46 |
| | | Pd by Govt | 26105 | | - Dividends & Int | 2729 | 474 | - - 10/20/46 incl |
| | | | | | Net due | 21961 | 27891 | |
| | | | | | | | 6575 | Less Cash Value |
| | | | | | | | 2729 | Less Dividends & Int |
| | | | | | | | 18587 | |
| | | | | | | | | Total calculated to 1/25/49 |
| | | | | | | | Premiums | 25386 |
| | | | | | | | Interest to 3/6/48 | 3554 |
| | | | | | | | - - 1/25/49 | 675 |
| | | | | | | | | 29615 |
| | | | | | | | Less Cash Value & Div. | 9304 |
| | | | | | | | | 20311 |

Red figures are dividends

Circled items are dividend and unearned interest credits

PLFFS. Ex 8 for Id

Policy #4v864v - Myron Kerr - Protection eff 1v-w-41 - Released from service v-8-46

| Premium | | Interest | Total | Premium | Interest | Total | Premium | Interest | |
|---|---|---|---|---|---|---|---|---|---|
| Due date | Amount | 6% Compound in advance | | Amount | 6% Compound in advance | Amount | Amount | 3% Simple | |
| 6/v3/4v | 976v | 6v3 | 10385 | 976v | 6v3 | 10385 | 976v | 4yrs | |
| 6/v3/43 | 9858 | 1v9v | v1535 | 9858 | 1v9v | v1535 | 9858 | 3yrs | |
| 6/v3/44 | 9858 | v004 | 33397 | 9858 | v004 | 33397 | 9858 | 2yrs | |
| 6/v3/45 | 9858 | v761 | 46016 | 9858 | v761 | 46016 | 9858 | 1yr | |
| 6/v3/46 | 9858 | 3566 | 59440 | 6189 | v943 | 54v48 | 6189 | Two-16days | |
| 6/v3/47 | 6189 | v569 | 68198 | | | | | | |
| v/8/48 incl | | | | | | | | | |
| Total | 55383 | 1v815 | 68198 | 45575 | 8743 | 54v48 | 45575 | | |
| | Less Cash Value Paid by Coul | | 41762 | | Less Cash Value | 33v85 | v945 | Interest to 6/v3/46 | |
| | | | v6436 | | Net due | v0963 | 857 | v v v/8/47 incl | |
| | | | | | | | 49377 | | |
| | | | | | | | 33v85 | Less Cash Value | |
| | | | | | | | 160.42 | | |
| | | | | | | | Total calculated to 45544 | | |
| | | | | | | | Premium | | 45575 |
| | | | | | | | Interest to | 6/v3/48 | 5677 |
| | | | | | | | v v | 1/45/49 | 804 |
| | | | | | | | | | 52056 |
| | | | | | | | Less Cash Value | | 33v85 |
| | | | | | | | | | 18721 |

269

Pltffs. Ex. 9 for Id.

Policy [illegible] - [illegible] - [illegible] - Released. [illegible] 2-8-46

| Premiums Due date | Amount | Interest 6% Compound in advance | Total 5 5/8% Basis |
|---|---|---|---|
| 12/21/41 | 6006 | 383 | 6389 |
| 12/21/42 | 6006 | 791 | 13186 |
| 12/21/43 | 6006 | 1415 | 20417 |
| 12/21/44 | 6006 | 1687 | 28110 |
| 12/21/45 | 6006 | 2178 | 36294 |
| 12/21/46 | 6006 | 2700 | 45000 |
| 12/21/47 | 369 | 369 | 46170 |
| 2/8/48 incl | | | |
| Totals | 36837 | 9333 | 46170 |
| | Less Cash Value | | 39400 |
| | Paid by Co. | | 6770 |

| Premiums | Amount | Interest 6% Compound in advance | Total |
|---|---|---|---|
| | 30831 | 6563 | 37394 |
| Less Cash Value | | | 33573 |
| Net due | | | 3821 |

| Premiums | Amount | Interest 5 1/2% Simple |
|---|---|---|
| | 30831 | |
| 2703 Interest to 12/21/46 | | |
| 123 " " 2/8/47 incl | | |
| | 33657 | |
| Less Cash Value | 33573 | |
| | 84 | |

Total calculated to 1/15/49

| | | |
|---|---|---|
| Premiums | | 30831 |
| Interest to 12/21/48 | | 4553 |
| " " 1/15/49 | | 87 |
| | | 35471 |
| Less Cash Value | | 33573 |
| | | 1898 |

270

# Plans. 10 for Id. Withdrawn off 2-xx-47 incl

Policy #470[illegible]8 - James Mabbutt - Protection off 3-12-41 - Release from service 12-25-45

| Due date | Premium Amount | Interest 6% Compound in advance | Total Less Loan | Premium Amount | Interest 6% Compound in advance | Total Accum | Premium Amount | Interest 3% Simple |
|---|---|---|---|---|---|---|---|---|
| 3/12/41 | 3635 | 232 | 2867 | 3635 | 232 | 3867 | 3635 | 5yrs |
| 3/12/42 | 3635 | 479 | 7981 | 3635 | 479 | 7981 | 3635 | 4yrs |
| 3/12/43 | 3635 | 741 | 12357 | 3635 | 741 | 12357 | 3635 | 3yrs |
| 3/12/44 | 3635 | 1021 | 17013 | 3635 | 1021 | 17013 | 3635 | 2yrs |
| 3/12/45 | 3635 | 1318 | 21966 | 3635 | 1318 | 21966 | 3635 | 1yr |
| 3/12/46 | 3433 | 1536 | 26935 | 2868 | 1134 | 26068 | 2868 | 9mo. 18 days |
| To 12/25/47 incl | | | | To Protest incl | | | To release incl | |
| Totals | 21608 | 5317 | 26935 | 21043 | 5025 | 26068 | 21043 | |
| | | Less Cash Value | 6350 | | Less Cash Value | 6070 | 1635 | Interest to 3/12/46 |
| | | Pdy Govt | 20575 | | Net due | 19998 | 498 | " " 12/25/45 |
| | | | | | | | 23176 | |
| | | | | | | | 6070 | Less Cash Value |
| | | | | | | | 17106 | |

Total calculated to 12/25/49

| | | |
|---|---|---|
| Premiums | | 21043 |
| Interest to | 3/12/48 | 2898 |
| " " | 12/25/49 | 549 |
| | | 24490 |
| Less Cash Value | | 6070 |
| | | 18420 |

Policy # 4vv036 - Glenn Clover - Protection off 3-28-41 Still protected - Assume term 3-28-53

PREM. EX. 11

| Premium | | Interest 6% Compound in advance | Total SSPA Loan | Premium Deposit | | Interest 32 Simple |
|---|---|---|---|---|---|---|
| Doc date | Amount | | | Amount | | |
| 3/28/41 | 4775 | 305 | 5080 | 4775 | | 12yrs |
| 12/28/41 | 513 | 08 | 4559 | | | |
| 3/28/42 | 4775 | 596 | 9930 | 4775 | | 11yrs |
| 12/28/42 | 523 | 08 | 9399 | | | |
| 3/28/43 | 4775 | 905 | 15079 | 4775 | | 10yrs |
| 12/28/43 | 508 | 08 | 14563 | | | |
| 3/28/44 | 4775 | 1234 | 20572 | 4775 | | 9yrs |
| 12/28/44 | 510 | 08 | 20054 | | | |
| 3/28/45 | 4775 | 1585 | 26414 | 4775 | | 8yrs |
| 12/28/45 | 518 | 08 | 25888 | | | |
| 3/28/46 | 4775 | 1957 | 32620 | 4775 | | 7yrs |
| 12/28/46 | 523 | 08 | 32089 | | | |
| 3/28/47 | 4775 | 2353 | 39217 | 4775 | | 6yrs |
| 12/28/47 | 528 | 08 | 38681 | | | |
| 3/28/48 | 4775 | 2774 | 46730 | 4775 | | 5yrs |
| 12/28/48 | 535 | 08 | 45687 | | | |
| 3/28/49 | 4775 | 3221 | 53683 | 4775 | | 4yrs |
| 12/28/49 | 555 | 08 | 53170 | | | |
| 3/28/50 | 4775 | 3695 | 61590 | 4775 | | 3yrs |
| 12/28/50 | 580 | 09 | 61001 | | | |
| 3/28/51 | 4775 | 4198 | 69974 | 4775 | | 2yrs |
| 12/28/51 | 610 | 09 | 69355 | | | |
| 3/28/52 | 4775 | 4732 | 78862 | 4775 | | 1yr |
| 12/28/52 | 1335 | 10 | 78197 | | | |
| Totals | 50744 | 27455 | 78197 | 57300 | | |
| | Less Cash Value | | 23550 | 11175 | Interest to 3/28/53 | |
| | | | 54647 | 68475 | | |
| | | | | 23550 | Less Cash Value | |
| | | | | 7989 | Less Dividends + Int | |
| | | | | 36936 | | |

Circled items are dividends and unexpired future credits.
Red figures are dividends.

272

PLAINTIFF'S EX. 12 FOR IDENT

4-40358 McDaniel - Protection eff 3-2-41 - Death 2/12/45

| Premium | | Interest | Total | | Premium | Interest | |
|---|---|---|---|---|---|---|---|
| Due date | Amount | 4% Compound in advance | 55% PA loan | | Amount | 3½ Simple | |
| 3/2/41 | 4433 | 283 | 4716 | | 4433 | 4 mos | |
| 3/2/42 | 4433 | 584 | 9733 | | 4433 | 3 mos | |
| 3/2/43 | 4433 | 904 | 15070 | | 4433 | 2 mos | |
| 3/2/44 | 4433 | 1245 | 20748 | | 4433 | 1 mo | |
| 3/2/45 | 3355 | 1003 | 25076 | | 3355 | 9 mos. | |
| 12/2/45 | | | | | | | |
| Totals | 21057 | 4019 | 25076 | | 21057 | | |
| | | | | | 1330 | Interest to | 3/2/45 |
| Refund interest 12/2/45 - 2/12/45 | | | 1181 | | 474 | " " | 12/2/45 |
| | | | 23895 | | 22861 | | |

PLFFS. 13 FOR 10.

VETERANS ADMINISTRATION
Insurance Form 382

August 18, 19[illegible]

# MONTHLY DIFFERENCE REPORT

## REQUIRED BY THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

This Report must be verified by the President or Secretary of the Insurance Company or Association and be forwarded in triplicate to the Veterans Administration, Insurance Service, Washington, D. C.

*Company or Association* CALIFORNIA WESTERN STATES LIFE INSURANCE COMPANY

*Address* SACRAMENTO, CALIFORNIA *Report for Month ending* JULY 31, 19 42

(Do not write on this line.)

| NAME OF INSURED. (1) | Number of Policy. (2) | Face Value of Policy. (3) | Amount of premiums in default unpaid over 31 days, not previously reported. (4) | Amount paid during calendar month and credited on premiums previously reported in default, including premiums deducted from the proceeds of policies terminated by death. (5) | Interest collected on deferred premiums paid and interest on premiums deducted from the proceeds of policies terminated by death. (6) | Premiums previously reported in default now reported by Veterans Administration. (7) | Sums of (3) to (7), inclusive. (8) | Difference between (4) and (8). (9) |
|---|---|---|---|---|---|---|---|---|
| August, Anthony J. | 419532 | $2,500 | $44.33 | | | | | $44.33 |
| Bulleit, Robert A. | 503178 | 1,000 | 29.77 | | | | | 29.77 |
| [illegible]aly, Harold L. | [illegible]382327 | 2,189 | | $5.00 | | | $5.00 | (5.00) |
| Estes, Karl I. | 420289 | 2,500 | 46.85 | | | | | 46.85 |
| Fish, George [illegible]. | 420338 | 2,500 | 45.13 | | | | | 45.13 |
| Harrison, William O. | 379968 | 1,000 | 19.58 | | | | | 19.58 |
| Johnstone, Claude E. | 419628 | 2,500 | 37.05 | | | | | 37.05 |
| Kelley Melvin O. | 429004 | 2,500 | 74.25 | | | | | 74.25 |
| Kern, Tyron | 428642 | 3,000 | 98.58 | | | | | 98.58 |
| Long, James A. | 427136 | 3,000 | 55.07 | | | | | 55.07 |
| McBride, Mark W. | 406960 | 2,000 | 30.92 | | | | | 30.92 |
| Reaves, Auburn M. | 420996 | 2,500 | 48.77 | | | | | 48.77 |
| Smith, J. Ray | 395348 | 1,000 | 31.16 | | | | | 31.16 |
| Smith, Victor J. | 402840 | 3,000 | 77.99 | 9.88 | | | 9.88 | 68.11 |
| Toronto, Frank | 420490 | 2,000 | 102.34 | | | | | 102.34 |
| Turner, James O. | 403428 | 5,000 | 73.53 | 19.18 | | | 19.18 | 54.35 |
| Warring, Stephen D. | 422966 | 3,500 | 78.68 | | | | | 78.68 |
| Wineberg, Edwin L. | 420276 | 2,500 | 44.33 | | | | | 44.33 |
| Woodward, Kenneth J. | 350354 | 1,000 | 6.78 | Premium from 6/26/42 to 10/1/42 | | | | 6.78 |
| Schneider, Earl N. | 421258 | 2500 | 1926 | Two year protection under Soldiers Act | | | | 1926 |
| | | | | | | | | 807.81 |

APPROVED FOR $ 807.81 CERT. #2.8.2.4 812.81

ISSUED 8/31/43 REGISTRAR [illegible]

No credit released pending investigation

Verification By Insurer:

The above has been fully verified and found to be a correct statement of the account.

Signed at Sacramento, California this August 18 1942 in the name of the Insurer.

By [signature]

(Name and Official Capacity)

L. H. Grindle, Secretary

RLTFS 13 FOR 10.

VETERANS ADMINISTRATION
Insurance Form 382

August 18, 19 42

# MONTHLY DIFFERENCE REPORT

## REQUIRED BY THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

This Report must be verified by the President or Secretary of the Insurance Company or Association and be forwarded in triplicate to the Veterans Administration, Insurance Service, Washington, D. C.

*Company or Association* CALIFORNIA WESTERN STATES LIFE INSURANCE COMPANY

*Address* SACRAMENTO, CALIFORNIA *Report for Month ending* JULY 31, 19 42

(Do not write on this line.)

| NAME OF INSURED. (1) | Number of Policy. (2) | Face Value of Policy. (3) | Amount of premiums in default unpaid over 31 days not previously reported. (4) | Amount paid during calendar month and ending on premiums previously reported in default, including premiums deducted from the proceeds of policies terminated by death. (5) | Interest collected on delinquent premiums paid and interest on premiums deducted from the proceeds of policies terminated by death. (6) | Premiums previously reported in default now reported by Veterans Administration. (7) | Sum of (5) to (7), inclusive. (8) | Difference between (4) and (8). (9) | Space for approval or rejection by the Bureau. (10) |
|---|---|---|---|---|---|---|---|---|---|
| August, Anthony J. | 419532 | $2,500 | $44.33 | | | | | $44.33 | |
| Balliet, Robert A. | 503178 | 1,000 | 29.77 | | | | | 29.77 | |
| aly, Harold L. | 382527 | 2,189 | | $5.00 | | | $5.00 | 5.00 | |
| Estes, Karl I. | 420249 | 2,500 | 46.85 | | | | | 46.85 | |
| Fish, George W. | 420338 | 2,500 | 45.13 | | | | | 45.13 | |
| Harrison, William O. | 379503 | 1,000 | 19.58 | | | | | 19.58 | |
| Johnstone, Claude E. | 419626 | 2,500 | 37.05 | | | | | 37.05 | |
| Kelley Melvin W. | 429004 | 2,500 | 74.25 | | | | | 74.25 | |
| Korn, Tyron | 426642 | 3,000 | 98.58 | | | | | 98.58 | |
| Long, James A. | 427138 | 3,000 | 55.07 | | | | | 55.07 | |
| Morris, Mark W. | 406980 | 2,000 | 30.92 | | | | | 30.92 | |
| Reaves, Auburn W. | 420096 | 2,500 | 46.77 | | | | | 46.77 | |
| Smith, A. Ray | 395348 | 1,000 | 31.16 | | | | | 31.16 | |
| Smith, Victor J. | 402860 | 3,000 | 47.99 | 9.88 | | | 9.88 | 38.11 | making default |
| Toronto, Frank | 420430 | 2,000 | 102.34 | | | | | 102.34 | |
| Turner, James O. | 403824 | 5,000 | 73.55 | 19.18 | | | 19.18 | 54.37 | not in default |
| Warring, Stephen D. | 422966 | 3,500 | 78.68 | | | | | 78.68 | |
| Wineberg, Erwin L. | 420276 | 2,500 | 44.33 | | | | | 44.33 | |
| Woodward, Kenneth J. | 390344 | 1,000 | 6.78 | re-instate from 6/26/42 to 10/1/42 | | | | 6.78 | |
| Schneider, Earl N. | 421258 | 2500 | 1926 | two year protection under amended act | | | | 1926 | |
| | | | | | | | | 807.81 | ett |

APPROVED FOR $ 807.81 CERT. #2834 812.81

ISSUED 8/31/42 REGISTRAR

No cert released pending investigation

Verification by Insurer:

The above has been fully verified and found to be a correct statement of the account.

Signed at Sacramento, California this 1st day of September 1942 in the name of the Insurer.

By

(Name and Official Capacity)

E. E. Arnold, Secretary

PLAINTIFFS' EXHIBIT No. 14

California Western States Life Insurance Company
Home Office, Sacramento

Agrees to Pay to

Beneficiary—Frances Plesha and Thomas Plesha, Mother and Father, respectively, of the insured, share and share alike, or to the survivor of them,

Face Amount—The Sum of Twenty-five Hundred Dollars upon receipt at its Home Office of this policy duly discharged together with due proofs of the death, while this policy is in force, of

The Insured—Paul E. Plesha.

Annual Life Insurance Premium—An Annual Premium of Fifty-seven and 63/100 Dollars is payable on each Sixth day of December commencing on the date of issue hereof, during the continuance of this policy, subject to the provisions hereof pertaining to the payment of premiums.

This policy is subject to the printed provisions of the following pages hereof which are hereby made a part of this contract.

In witness whereof, California-Western States Life Insurance Company has executed this policy at Sacramento, California, this Sixth day of December, 1940, which is the date of issue of this policy.

[Seal] O. J. LACY, President
/s/ B. V. GRISWOLD, Secretary

Countersigned by: Signed A. G. Kane.

Plaintiffs' Exhibit No. 14—(Continued)

Policy No. 419814 Age 20

Ordinary Life (E85) Special Class. Premiums payable until Age 85 unless previously paid up by dividends. Annual Dividends.

* * * * *

How Premiums Are Payable: The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor of the annual premium stated on the first page hereof, as the premium for term insurance for one year from the date of issue hereof and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue for the period stated on the first page hereof. Possession of the policy without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed as an acknowledgment of the payment or receipt of premium. All premiums hereon are payable either at the Home Office of the Company or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every pre-

Plaintiffs' Exhibit No. 14—(Continued)

mium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured.

* * * * *

Grace for Payment of Premiums: A grace period of one month, not less than thirty days (without interest) will be allowed in payment of all premiums after the first, during which time the policy shall remain in force. In the event of the death of the insured within said grace period, the unpaid premium will be deducted from the amount payable hereunder.

When Policy Will Lapse: If any premium be not paid by the end of the grace period, this policy shall lapse.

How Policy May Be Reinstated After Lapse: In event of default in payment of any premium on this policy, the insured shall have the right, at any time within five years after such default, to apply for reinstatement thereof. Application for reinstatement must be made in writing, accompanied by evidence of insurability satisfactory to the Company, together with payment of arrears of premiums and any other indebtedness, with compound interest thereon from date of default at a rate not exceeding six per centum per annum; provided, however, that the policy shall not be considered as reinstated unless and until the application therefor shall have been approved by the Company at its Home Office, such reinstatement to be effective only

Plaintiffs' Exhibit No. 14—(Continued)

from and after the day on which the application for reinstatement is approved.

* * * * *

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PLAINTIFFS' EXHIBIT No. 15

California-Western States Life Insurance Company
Sacramento, California

Number 420558 Face Amount $2,500.00
Age 18 Annual Premium $48.85

Will Pay Twenty-five Hundred Dollars to Hazel H. Mabbutt, Mother of the insured, if living, otherwise to Robert H. Mabbutt, Brother of the insured, if living, otherwise to Una Stanford, Aunt of the insured, subject to deferred settlement endorsement attachment hereto, beneficiary, (with the right to change such beneficiary reserved to the insured, subject to the provisions herein contained regarding change of beneficiary) immediately upon receipt of due proofs of the death of James E. Mabbutt, the insured, while this policy is in force.

Guaranteed Options of Settlement at Age 65

If all premiums becoming due on this policy have been paid as provided herein, and if there shall be no indebtedness hereon, the insured, on the policy anniversary at which his age at nearest birthday is sixty-five years, may surrender this policy for any one of the following settlement options:

1. A policy of paid-up life insurance of $2,068.00; or
2. A cash payment of $1,435.00; or

Plaintiffs' Exhibit No. 15—(Continued)

3. A straight life annuity of $10.30 per month; or
4. A cash refund annuity of $7.95 per month.

Under either annuity the first payment will be made on the policy anniversary on which the option becomes available, and subsequent payments monthly thereafter until the death of the insured.

Under Option 4 (cash refund annuity) the Company guarantees to pay an amount at least equal to the cash payment referred to in Option 2 above and, if the insured should die before having received a sum equal thereto, the Company, upon receipt of due proofs of such death, will pay to the beneficiary in one sum an amount sufficient to make the total of payments equal such cash payment.

* * * * *

Premiums

The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor of Forty-eight and 85/100 Dollars ($48.85), as the premium for term insurance for one year from the date of issue hereof and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue during the continuance of the policy. Possession of the policy without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed

Plaintiffs' Exhibit No. 15—(Continued)

as an acknowledgment of the payment or receipt of premium. All premiums hereon are payable either at the Home Office of the Company or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every premium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured.

All of the premiums and values in this policy are based on the assumption that premiums are payable annually as provided above. However, after the policy shall have been in force one year, the insured shall have the privilege, on written request on any anniversary of the date of issue hereof, of paying the premiums hereon semi-annually, quarterly or monthly. Semi-annual premiums shall be fifty-one per centum, quarterly premiums twenty-six per centum and monthly premiums eight and eighty-three hundredths per centum of the annual premium payable hereunder, provided that no individual premium payment shall be of an amount less than five dollars. In the event of death of the insured all semi-annual, quarterly or monthly premiums necessary to complete payment of premiums to the end of the policy year in which the said death occurs

Plaintiffs' Exhibit No. 15—(Continued)

shall be deducted from the amount payable hereunder.

* * * * *

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## PLAINTIFFS' EXHIBIT No. 16

California-Western States Life Insurance Company
Sacramento, California

Number 395773 Face Amount $2,000.00
Age 24 Annual Premium $61.12

Will Pay Two Thousand Dollars to Myron Kern, the insured hereunder, if living on the Twenty-first day of December, 1974; or to Ellen L. Kern, Stepmother of the insured, if living, otherwise to Lenore Kern and Wilfred Kern, Sister and Brother, respectively, of the insured, share and share alike, or to the survivor of them, beneficiary, (with the right to change such beneficiary reserved to the insured, subject to the provisions herein contained regarding change of beneficiary) immediately upon receipt of due proofs of the death of the said insured prior to maturity date of this policy and while the policy is in force.

Guaranteed Options of Settlement at Maturity

If all premiums becoming due on this policy have been paid as provided herein, the insured, on the maturity date hereof, shall have the choice of one of the following options:

1. A cash payment of $2,000.00; or
2. A life annuity, payable monthly, of $13.50, the

Plaintiffs' Exhibit No. 16—(Continued)

first payment to be made on the maturity date of the policy and succeeding payments monthly thereafter until the death of the insured; or

3. A life annuity, payable monthly, of $10.62, the first payment to be made on the maturity date of the policy and succeeding payments monthly thereafter until the death of the insured; provided that, if the insured should die before receiving in annuity payments a sum equal to the face amount of the policy, the Company, upon receipt of due proofs of such death, will pay to the beneficiary in one sum an amount sufficient to make the total of payments equal the said face amount; or

*4. A policy of paid-up life insurance of $3,190.00; or

*5. A policy of paid-up life insurance of $2,000.00 and cash $764.00.

*Options 4 and 5 are available only on receipt of evidence of insurability satisfactory to the Company.

* * * * *

Premiums

The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor of Sixty-one and 12/100 Dollars ($61.12), as the premium for term insurance for one year from the date of issue hereof and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue

Plaintiffs' Exhibit No. 16—(Continued)

until Twenty full annual premiums in all shall have been duly paid, or until the prior death of the insured. Possession of the policy without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed as an acknowledgment of the payment or receipt of premium. All premiums hereon are payable either at the Home Office of the Company or or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every premium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured.

All of the premiums and values in this policy are based on the assumption that premiums are payable annually as provided above. However, after the policy shall have been in force one year, the insured shall have the privilege, on written request on any anniversary of the date of issue hereof, of paying the premiums hereon semi-annually, quarterly or monthly. Semi-annual premiums shall be fifty-one per centum, quarterly premiums twenty-six per centum and monthly premiums eight and eighty-three hundredths per centum of the annual prem-

Plaintiffs' Exhibit No. 16—(Continued)

ium payable hereunder, provided that no individual premium payment shall be of an amount less than five dollars. In the event of death of the insured all semi-annual, quarterly or monthly premiums necessary to complete payment of premiums to the end of the policy year in which the said death occurs shall be deducted from the amount payable hereunder.

* * * * *

## PLAINTIFFS' EXHIBIT No. 17

California-Western States Life Insurance Company
Home Office, Sacramento

Agrees to Pay

Face Amount—The Sum of Three Thousand Dollars to

The Insured—Myron Kern.

Maturity Date—On the 23rd day of June, 1974, if the insured shall be then living; or to

Beneficiary—Ellen L. Kern, Step-mother of the insured, if living, otherwise to Lenore Kern and Wilfred Kern, Sister and Brother, respectively, of the insured, share and share alike, or to the survivor of them, upon receipt at the Home Office of the Company of this policy duly discharged together with due proofs of the death of the insured prior to the maturity date hereof and while this policy is in force.

Change of Beneficiary—The insured has xxx reserved the right to change the beneficiary.

Plaintiffs' Exhibit No. 17—(Continued)

Annual Life Insurance Premium—An Annual Premium of One Hundred and 35/100 Dollars is payable on each 23rd day of June, commencing on the date of issue hereof, until Twenty full annual premiums in all shall have been duly paid, or until the prior death of the insured, subject to the provisions hereof pertaining to the payment of premiums.

This policy is subject to the printed provisions of the following pages hereof which are hereby made a part of this contract.

In witness whereof, California-Western States Life Insurance Company has executed this policy at Sacramento, California, this 23rd day of June, 1941, which is the date of issue of this policy.

[Seal] /s/ O. J. LACY, President
/s/ B. V. GRISWOLD, Secretary

Countersigned by: Signed A. G. Kane.

Policy No. 428642 Age 27

Endowment at age 60, 20 Premiums.
Non-Participating.

* * * * *

How Premiums Are Payable: The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor of the annual premium stated on the first page hereof, as the premium for term insurance for one year from the date of issue hereof

Plaintiffs' Exhibit No. 17—(Continued)

and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue for the period stated on the first page hereof. Possession of the polic, without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed as an acknowledgment of the payment or receipt of premium. All premiums hereon are payable either at the Home Office of the Company or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every premium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured. * * * * *

Grace for Payment of Premiums—A grace period of one month, not less than thirty days (without interest) will be allowed in payment of all premiums after the first, during which time the policy shall remain in force. In the event of the death of the insured within said grace period, the unpaid premium will be deducted from the amount payable hereunder.

When Policy Will Lapse—If any premium be not

Plaintiffs' Exhibit No. 17—(Continued)

paid by the end of the grace period, this policy shall lapse.

How Policy May Be Reinstated After Lapse—In event of default in payment of any premium on this policy, the insured shall have the right, at any time within five years after such default, to apply for reinstatement thereof. Application for reinstatement must be made in writing, accompanied by evidence of insurability satisfactory to the Company, together with payment of arrears of premiums and any other indebtedness, with compound interest thereon from date of default at a rate not exceeding six per centum per annum; provided, however, that the policy shall not be considered as reinstated unless and until the application therefor shall have been approved by the Company at its Home Office, such reinstatement to be effective only from and after the day on which the application for reinstatement is approved.

* * * * *

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DEFENDANT'S EXHIBIT "A"

November 14, 1946

Mr. Paul E. Plesha 9 EAD
314 26th Street, Sacramento, California

C-R No. 3 309. Policy No. 419 814.

Dear Sir:

The Veterans Administration has been advised that you were separated from active service on October 20, 1945.

Defendant's Exhibit "A"—(Continued)

As you may recall, you have the above numbered life insurance policy under the protection of the Soldiers' and Sailors' Civil Relief Act. This means that all the premiums becoming due and not paid during the period of protection, are charged as a loan against the policy, and on this indebtedness you pay interest, at the policy loan rate of the company.

You may leave this policy under the protection of this Act for a maximum period of two years from the date of your discharge. During this time you may repay any part of your loan, as well as pay any premiums that become due, but at the end of this two year period, protection will cease and an accounting will be made. It is also your privilege to have the policy withdrawn from the protection of the Act now or at some future time within the two year period with the consent of the Veterans Administration.

When the protection provided by the Act terminates, and a final accounting is made, you will owe the Insurance Company the difference between this premium loan and the then cash value of the policy available for this purpose. By law, the United States guarantees this difference to the Insurance Company and any part of it left unpaid will be paid by the United States to whom you will then owe whatever payment the Government made on your account.

Defendant's Exhibit "A"—(Continued)

A copy of this letter is being mailed to the company carrying your insurance and it is suggested that you communicate with it for any necessary information, if it is your desire to terminate the protection prior to the expiration of the two year period.

Very truly yours,

R. D. Peck,
Director, Actuarial Service

Copy to: California-Western States Life Insurance Company, Sacramento, California.

GES—GE/ehp FL 9-63 May 1946

July 21, 1947
9EAD

Mr. Paul E. Plesha
314 26th Street, Sacramento, California

C-R 3309 Policy No. 419 814.

Dear Sir:

According to the records of the Veterans Administration, your life insurance policy, numbered above, is still under the protection of the Soldiers' and Sailors' Civil Relief Act. This protection will terminate on October 20, 1947, because, under the law, protection may not continue for more than two years after the date of separation from active service. On This Termination Date, The United States

Defendant's Exhibit "B"—(Continued)

Mr. Paul E. Plesha Aug. 10, 1948
314 26th Street, Sacramento, California

4AAB-X CR-No. 3 309 Policy No. 419 814.

Dear Mr. Plesha:

We have your letter postmarked May 18, 1948 which is in response to Form Letter 4-62 from this Administration dated May 7, 1948 relative to your indebtedness to the United States in the amount of $261.05 on account of premiums and interest guaranteed under the provisions of the Civil Relief Act in connection with your commercial life insurance policy issued by the California Western States Life Insurance Company.

Your financial condition as set forth in your letter is fully appreciated. Since it is not the intention of this Administration to work a hardship on any veteran in liquidating his indebtedness, monthly installments of $10.00 to begin with will be acceptable to the Veterans Administration if the payments are proportionately increased when your financial condition improves in order to liquidate the entire indebtedness within the allotted time of approximately one year.

As previously stated, remittances should be made by check, draft or money order drawn payable to the Treasurer of the United States and forwarded to Collections Division, Veterans Administration, Washington 25, D. C. for deposit to the credit of appropriation 36X0135, Soldiers' and Sailors' Civil Relief, VA.

Defendant's Exhibit "A"—(Continued)

**Government Will Cease Guaranteeing Further Premiums On Your Policy, And It Will Be Necessary For You To Take Some Action To Maintain Your Insurance In Force.**

Any premiums on your policy that became due and were not paid during the period of protection, have been charged as a loan against the policy with interest at the policy loan rate of the insurance company. There are now two courses of action open to you, depending on whether the loan, if any, against your insurance policy on the termination date will be more or less than the cash value. The company carrying your insurance will advise you, upon request, as to the loan status of your policy.

If there is a loan which is greater than the cash value, the insurance company must, in order to invoke the provisions of the Soldiers' and Sailors' Civil Relief Act, terminate your policy on the date shown above, render a Statement of Account, and receive payment of the difference from the United States Government. Any amount paid on your account will be a debt owed by you to the United States. You may not continue your policy in force if the United States has to make a cash settlement with the insurer.

If the cash value of your policy exceeds the loan, or if there is no loan, there will be no settlement to be made by the Government. The payment of premiums and all transactions regarding this policy will be between you and the insurance company.

Defendant's Exhibit "A"—(Continued)

It is suggested that you get in touch with the insurance company as soon as possible and advise them of your wishes in this matter.

Very truly yours,

R. D. Peck,
Director, Actuarial Service

Copy to: California-Western States Life Ins. Co., Sacramento, California.

FL 9-266 Nov. 1946 GE/ct.

Veterans Administration Insurance Form 380 3309

Application for Benefits
Soldiers' and Sailors' Civil Relief Act of 1940

[Stamped]: Received Mar. 17, 1941.

Use an application (and copy) for each insurance policy, or certificate of membership, to be brought under the provisions of the Act. Send this Application to the Insurance Company, Association, or Society. Send Copy of Application to the Veterans Administration, Washington, D. C.

To: Calif-Western States Life Insurance Company, 10th and J Streets, Sacramento, California.

Face Value of insurance: $2,500. Effective date of insurance: 12-6-40. Policy Number 419814.

I, the insured under the above identified policy issued by the above named insurer, do hereby make

Defendant's Exhibit "A"—(Continued)

application to have said policy protected in accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, and to that end I do hereby consent and agree to such modifications of the terms of the policy as are made necessary by the provisions of the Act; with the understanding that the insurer (Company or Association), by receiving and filing this application, shall be deemed to have assented thereto, to the extent, if any, to which the policy is within the provisions of the Act.

1. Name of insured: Paul E. Plesha.

2. Home address: 314 26th Street, Sacramento, California. Address to which Premium Notices are sent: Same as above.

3. Date of birth: 6-18-20.

4. Place of birth: Sacramento, California.

5. Date of last entrance into active service: March 3, 1941.

6. Identification number: 20,908,010. Branch of Service: Army.

7. Due date of last premium paid on policy: 12-6-40.

8. Name and address of office or person to whom paid: Calif-Western States Life Ins. Co., Sacramento, Calif.

9. Next premium will be due and payable on: 3-6-41.

Defendant's Exhibit "A"—(Continued)

10. For period of: Quarterly.

11. Is there any indebtedness on this policy due the insurer: No.

12. Is the policy pledged or assigned to any person, firm, corporation, etc., other than the insurer, as security for an indebtedness: No.

13. Give the name and address of person (firm, corporation, etc.) who is now in possession of the policy: Tom Plesha.

14. Have you made a similar application to have another policy (or policies) protected by the provision of the Act? No.

In consideration hereof, I hereby consent and agree that the United States shall be protected in the amount of any premiums and interest guaranteed on the above numbered policy in the event of its maturity as a claim, or out of the cash surrender value of the policy, at the expiration of the period of protection under the Act.

Signed at Sacramento, California, this March 5, 1941.

/s/ Paul E. Plesha, Corp. 184th Inf.
Rifle, Co. D.

The undersigned witnessing officer does hereby certify that the insured is on active duty in the military service of the United States. Signed: Charles H. Ferris, Capt., Co. D, 184th Inf.

[Stamped]: Received Mar. 15, 1941.

Defendant's Exhibit "A"—(Continued)

Copy 3309

Veterans Administration Insurance Form 381

Report by Insurer

Soldiers' and Sailors' Civil Relief Act of 1940

[Stamped]: Received Mar. 22, 1941.

A report in duplicate on each policy will be made by the insurer to the Veterans Administration, Insurance Service, Washington, D. C., immediately upon request of an application from the insured.

From: California-Western States Life Insurance Co., Sacramento, California.

To: Veterans Administration, Insurance Service, Washington, D. C.

The insurer hereby reports the receipt of an application from the insured for protection of his policy under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940.

1. Date of insured's application: 3-5-41.
2. Date received by insurer: 3-10-41.
3. Name of insured: Paul E. Plesha.
4. Home address: 314 26th St., Sacramento, Cal.
5. Effective date of insurance: 12-6-40.
6. Policy Number: 419814.
7. Date of birth: 6-18-1920.
8. Place of birth: Sacramento, Calif.
9. Plan of insurance: O.L. (E85) Part.—No E.I. or P.E.
10. Face Amount of insurance: $2,500.
11. Age at issue: 20.

Defendant's Exhibit "A"—(Continued)

12. Amount of premium $57.63 annual, $14.98 qtly.

13. Due date of last premium paid on policy: 12-6-40.

14. Next premium will be payable on: 3-6-41.

15. For period of: Quarterly.

16. A statement of all past due premiums, if any, with interest calculated to include date of insured's application, is as follows: None.

17. A statement of the cash surrender value, as of the date of insured's application, is as follows: None.

18. A statement of all indebtedness, if any, due the insurer under this policy, with interest calculated to include date of insured's application, is as follows: None.

19. If it appears that the policy has been assigned to a person, firm, or corporation other than the insurer, please give a complete statement of the facts as shown by the records of your office: None.

20. Does the policy (certificate of membership, constitution, or by-laws of the organization) contain any provision regarding service by the insured with the military or naval forces of the United States? No.

21. What information does the insurer have about present whereabouts of policy? None.

The insurer hereby certifies the above to be a correct statement regarding the policy as shown on the records at its principal office or place where such records are maintained.

Defendant's Exhibit "A"—(Continued)

It is understood and agreed that the insurer, by receiving and filing the application made by the insured, shall be deemed to have assented thereto, to the extent, if any, to which the policy is within the provisions of the Act. Further it is understood and agreed that the United States shall have a first lien upon the policy while receiving the benefits of the Act, subject only to any lien existing at the time of insured's application, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of the lien. Before any dividend is paid or any loan or settlement is made while the policy is within the provisions of the Act, the written consent of the Veterans Administration must be obtained.

Signed at Sacramento, California, this 12th day of March, 1941.

California-Western States Life
Insurance Co.,
/s/ By J. A. Mason, Manager

[Stamped]: Received Mar. 21, 1941.

DEFENDANT'S EXHIBIT "B"

Washington 25, D. C.

Notice to Insured to Remit Amount Stated in Column (4) Below

In Reply Refer to: 4AAB.

C-R- No. 3309. Policy No. 419 814.

Name of Insured: Paul E. Plesha, 314 26th St., Sacramento, California.

Name of Insurer: California-Western State Life Ins. Co., Sacramento, California.

(1) Effective Date of Insurance: December 6, 1940.

(2) Face Value: $2500.

(3) Termination Date: October 20, 1947.

(4) Amount Awarded Insurer: $261.05.

1. An award has been approved in settlement of premiums and interest guaranteed under Article IV of the Soldiers' and Sailors' Civil Relief Act, as amended, in connection with the above described life insurance policy. The policy ceased and terminated, as provided by Section 406 of the Act, as amended, on the termination date indicated above.

2. The United States has paid to the insurer the amount awarded, as stated in Column (4) above; this amount represents a debt due the United States by the insured above named and will be collected by direct remittance, by deduction from any amount due said insured by the United States or otherwise as provided by law.

3. Upon receipt of this letter the insured herein

Defendant's Exhibit "B"—(Continued)

named should promptly remit to the Collections Division, Veterans Administration, Washington 25, D. C., the amount stated in Column (4) above. Remittance should be by check or money order drawn in favor of the Treasurer of the United States and should be accompanied by the attached copy of this letter for identification purposes. If remittance is not received within 30 days from date of this letter collection will be otherwise effected by Payees Account Service, as stated in the preceding paragraph.

Date: Feb. 13, 1948.

/s/ A. B. Lenoir
L. J. Johnston,
Director, Payees Account Service

FL 4-62 Jun 1946 (Replaces Form 1402)

[Letterhead of The Connecticut Mutual Life Insurance Company, Hartford]

Veterans Administration
Washington 25, D. C.

March 11, 1948

Re: 4AAB—CR No. 3309—Policy No. 419-814.
Attention: Mr. L. J. Johnson, Director Payees Accounts Service.

Dear Mr. Johnson:

This is in response to your letter of February 13, 1948. It so happens that I am not in a position at the present time to make payment, or even a deposit

Defendant's Exhibit "B"—(Continued)

toward the amount due as referred to in your correspondence.

Because of this, would you be kind enough to write me a letter, telling me exactly the amount I owe, and also what mode of payment I may avail myself of in order to take care of this obligation.

Yours very truly,

/s/ Paul E. Plesha

PP/1 enc. OK N P.P.

In reply refer to: 4AAB. Civil Relief No. 3309. Policy No. 419 814. Insurance Company: California Western States Life Insurance Co.

Mr. Paul E. Plesha May 7, 1948
314 26th Street, Sacramento, California

Dear Sir:

Reference is made to your letter of March 11, 1948.

In connection with the above described life insurance policy, an award has been approved under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act, as amended, in favor of the company named and payment of the award in the amount of $261.05 has been made to the company. The policy, which was protected from possible lapse during the period of your military training pursuant to application made by you, ceased and terminated on October 20, 1947.

Under the provisions of the Soldiers' and Sailors'

Defendant's Exhibit "B"—(Continued)

Civil Relief Act the Government guaranteed to the insurance company all premiums and interest not paid by you during the period of protection in excess of the cash value of the policy at the time of termination. The amount which has been paid to the company now becomes a debt which you owe the Government.

The amount of the indebtedness should be paid in full within the next 30 days. However, if the indebtedness is of such amount that payment in one sum would impose undue hardship upon you due to your financial circumstances, you should communicate with the Payees Accounts Service, Veterans Administration, Washington 25, D. C., stating the circumstances which would cause such hardship, and advising the largest amount which you would be able to pay monthly with a view to liquidating the indebtedness as soon as possible, but in any event within a period of approximately one year. If reply is not received from you within 30 days from the date of this letter, it will be necessary to effect collection either by deduction from any amounts due you from the Government or otherwise, as provided by law.

Remittance should be made by check, draft or money order drawn in favor of the Treasurer of the United States and forwarded to Collections Division, Veterans Administration, Washington 25, D. C. for deposit to the credit of the appropriation Soldiers' and Sailors' Civil Relief, VA 36X0135. Your remittance (or the first installment remittance

Defendant's Exhibit "B"—(Continued)

if payment cannot be made in one sum) should be accompanied by the enclosed copy of this letter for identification purposes.

All communications, including remittances, directed to this Administration regarding this policy and your indebtedness in connection therewith should bear your Civil Relief (CR) number for identification purposes.

Very truly yours,

/s/ A. D. Garter
L. J. Johnston,
Director, Payees Accounts Service

APJ:apj FL 4-62 Mar 1948

[Letter written in longhand]

Dear Sirs:

In reference to the enclosed letter I submit the following information.

I find it impossible at the present time to send more than Ten dollars a month because of other financial obligations.

Would you please advise me if this would be satisfactory and in answering would you please return the copy of the letter I have enclosed from the Veterans administration, as I will need it to forward to the collection Division when I make my first payment.

/s/ Paul E. Plesha
314-26 Street, Sacto, Calif.

1 encl.

Defendant's Exhibit "B"—(Continued)

All communications directed to this Administration regarding this matter, as well as remittances to be applied on the indebtedness, should bear your CR-No. 3 309 for identification purposes. The enclosed copy of this letter should accompany your first remittance.

Very truly yours,

/s/ F. D. Shirley
O. O. Fleming,
Director, Payees Accounts Service

Enc. APJ:apj APJ

[Letter and two attachments written in longhand]

Dear Sirs:

Enclosed is the first quart of blood I owe you. Check for Ten dollars enclosed.

/s/ Paul E. Plesha,
CR-No. 3 309 Policy No. 419,814

2 attchs S NAN APJ 10/14/48

Defendant's Exhibit "B"—(Continued)

Folder chg. to Bo#12 10/12/46 ES 11/15/48

CR. No. 3-308 Policy No. 419.814 27719 Paul E. Plesha, 314-26 Street, Sacramento, Calif.

C6546188 N1927254 No KVTH 11-10-48 WC SN20-908-010

To: Treasurer of the United States, Collections Division, Veterans Adm., Washington 25, D.C.

Refund Civil Policy 36X0135.

Enclosed please find check to cover $10.00; Ten dollar-monthly payment.

a/c /s/ Paul E. Plesha CR-3309

1 Bk—El [Stamps Illegible]

Closed NSL 28502 Dec. 28, 1948

Treasurer of the United States
Collections Div. Vet. Adm., Wash. 25, D. C.

Dear Sir:

Enclosed is a check to cover Nov. and Dec. payments due under the appropriations 36X0135, Soldiers and Sailors Civil Relief, VA 20.00

Refer my CR-No. is, 3 309

Amount of check $20.00. Twenty and no/100.

Sincerely

/s/ Paul E. Plesha, 314-26th Street
Sacramento, Calif.

Happy New Year to you all. Even though you guys are breaking me.

Defendant's Exhibit "B"—(Continued)

Mr. Paul E. Plesha Feb. 17, 1950
314 26th Street, Sacramento, California

4AAE Civil Relief No. 3 309 Policy No. 419 814 Calif. West. States Life Ins. Co.

Dear Mr. Plesha:

Reference is made to the deduction in the amount of $221.05 from your National Service Life Insurance dividend to be applied on your indebtedness to the United States established against your commercial life insurance policy mentioned above which received protection under the provisions of Article IV, Soldiers' and Sailors' Civil Relief Act.

The amount of the above deduction has been credited to your account thereby liquidating the above-mentioned indebtedness to the United States.

Very truly yours,

/s/ [Illegible]
O. O. Fleming,
Director, Payees Accounts Service

MD:dlb

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DEFENDANT'S EXHIBIT "L"

Memorandum November 10, 1925

From: Chief, Disbursing Division. DCA
To: Insurance Division. Attention, Mr. Sasser.
Subject: Soldiers' & Sailors' Civil Relief Claims. V. B. 1923.

1. In compliance with verbal request the follow-

Defendant's Exhibit "L"—(Continued)

ing statement of amounts received and deposited in the Treasury to the credit of the appropriation Soldiers' and Sailors' Relief Claims, V. B., 1923, is furnished:

| Name | Amount | Receipt No. | Date Deposited in Treasury |
|---|---|---|---|
| Brey, Wm. G. | $22.63 | 416698 | April 9, 1924 |
| Danilson, H. G. | 17.16 | 408734 | February 9, 1924 |
| Danilson, H. G. | 17.16 | 413219 | March 8, 1924 |
| Danilson, H. G. | 17.14 | 420206 | April 9, 1924 |
| Davis, Ancil G. | 50.44 | 398925 | January 9, 1924 |
| Dick, Wm. W. | 24.11 | 467176 | November 8, 1924 |
| Hannah, Joseph E. | 22.60 | 387790 | November 9, 1923 |
| Harker, Glenn F. | 49.45 | 389510 | December 10, 1923 |
| MacKechnie, Archibald R. | 16.34 | 394353 | December 10, 1923 |
| Miller, Raymond O. | 83.50 | 386531 | November 9, 1923 |
| Montgomery, Wm. P. | 14.10 | 386522 | November 9, 1923 |
| Montgomery, Wm. P. | 20.00 | 393795 | December 10, 1923 |
| Montgomery, Wm. P. | 19.15 | 407596 | February 9, 1924 |
| Stewart, Thomas H. | 110.64 | 509108 | October 8, 1925 |
| | $484.42 | | |

/s/ Wm. H. Holmes

SUMMARY

| | | |
|---|---|---|
| Amount of Appropriation | $25,000.00 | |
| Reimbursements | 484.42 | |
| | | $25,484.42 |
| Disbursements | $19,868.07 | |
| Turned back to Surplus Fund | 5,505.71 | |
| Treasury Cash | 110.64 | |
| | | $25,484.42 |

Defendant's Exhibit "L"—(Continued)

United States Veterans Bureau

Memorandum DAD-B December 9, 1925

From: Harold W. Breining, Assistant Director Finance Service.

To: Chief, Insurance Division.

Subject: Report of Soldiers' & Sailors' Civil Relief Claims, V.B. 1923.

In reply to your memorandum of December 7, 1925, relative to a final report on the appropriation, "Soldiers' and Sailors' Civil Relief Claims, V.B. 1923", you are advised that this report agrees with the records of Finance Service insofar as the disbursements and refunds are concerned.

Under date of September 26, 1925, Warrant No. 125, was issued which deposited to the Surplus Fund the sum of $5,505.71 leaving a balance in the Treasury of $110.64.

There is attached a statement of the appropriation as shown on the records of Finance Service.

/s/ Harold W. Breining

Defendant's Exhibit "L"—(Continued)

Soldiers' & Sailors' Civil Relief Fund
Statement of Account
Claims Paid to Insurance Companies

* * * * *

Reimbursements by Assureds

| | | | |
|---|---|---|---|
| Brey, William G. | $22.63 | Harker, Glenn F. | $49.45 |
| Danilson, H. G. | 17.16 | MacKechnie, Archibald R. | 16.34 |
| Danilson, H. G. | 17.16 | Miller, Raymond O. | 83.50 |
| Danilson, H. G. | 17.14 | Montgomery, William P. | 14.10 |
| Davis, Ancil G. | 50.44 | Montgomery, William P. | 20.00 |
| Dick, William W. | 24.11 | Montgomery, William P. | 19.15 |
| Hannah, Joseph E. | 22.60 | Stewart, Thomas H. | 110.64 |

SUMMARY

| | | |
|---|---|---|
| Amount of Appropriation | $25,000.00 | |
| Reimbursements | 484.42 | |
| | | $25,484.42 |
| Claims paid to Insurance Companies | $19,868.07 | |
| Balance on hand for return to Treasury | 5,616.35 | |
| | | $25,484.42 |

United States Veterans Bureau

Memorandum December 10, 1925

From: Chief, Insurance Division.
To: The Director.
Subject: Final Report of Civil Relief Section.

Section 100 of the Act of Congress approved March 8, 1918, known as the Soldiers' and Sailors' Civil Relief Act, is quoted as follows:

"That for the purpose of enabling the United States the more successfully to prosecute and carry on the war in which it is at present engaged, pro-

Defendant's Exhibit "L"—(Continued)

tection is hereby extended to persons in military service of the United States in order to prevent prejudice or injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the continuance of the present war."

Article IV of the Soldiers' and Sailors' Civil Relief Act related to insurance, and the Civil Relief Section of the Bureau of War Risk Insurance was organized to carry out the provisions of that Article. The protection afforded to the soldiers and sailors consisted of a guarantee by the United States Government to the respective insurers for the premiums on such of their policies as were approved for the benefits of the Act, upon application of the insured and when the premiums on such policies were not otherwise paid. The benefits of the Act were extended to persons in the military or naval service of the United States during the period of their military service and for one year thereafter or one year from the declaration of peace, whichever was the earlier date.

The work of the Civil Relief Section determined the eligibility of applicants for the benefits of Article IV of the Act, and to keep an account of the amount due each insured by means of "Monthly Difference Reports." In order to carry out the pro-

Defendant's Exhibit "L"—(Continued)

visions of the Act it was necessary to touch upon nearly every class of work handled in the Home Office of an insurance company, such as the consideration of applications for approval or rejection, conducting correspondence in order to clear up discrepancies, questions of beneficiary, assignment, indebtedness, interest accumulations, premium accounting, record card writing, and filing of every description.

The Civil Relief Section received 10,468 applications, of which 7,745 were approved as to the benefits of the Act. The face value of insurance represented by the approved applications amounted to $12,526,956.29, on which premiums in the amount of $362,399.50 were guaranteed by the Government. During the period of protection 102 policies matured as death claims, amounting to $184,006.

The Joint Resolution of Congress, dated March 3, 1921, provided among other things for the termination of Article IV of the Soldiers' and Sailors' Civil Relief Act. However, Section 411 of said Article directed that the protection afforded assureds in the active service at the termination of the war should be continued for one year after the termination of the war—the other policies having terminated at the expiration of one year from the date of the insured's discharge from the service. If the premiums protected by the Government were not paid by the insured or someone in his behalf the policy was surrendered for its cash value, and if the cash value was insufficient to cover the defaulted

Defendant's Exhibit "L"—(Continued)

premiums and interest, the difference was taken care of by the Government.

An appropriation of $25,000 was made available by Congress to cover the claims arising under Article IV of the Act. Claims in the amount of $19,868.07 were paid.

The Soldiers' and Sailors' Civil Relief Bonds in the amount of $195,500 which were issued by the Government to the different companies as security together with interest in the amount of $13,935.25 have been returned to the Division of Loans and Currency, Treasury Department, for cancellation.

The itemized statement attached shows the number and amount of claims paid, the number and amount of reimbursements, and a summary of the disposition of the Civil Relief Fund.

/s/ L. C. Jesseph

Forwarded: Signed Charles E. Mulhearn, Assistant Director.

United States Veterans Bureau

Memorandum December 15, 1925

From: O. W. Clark, Assistant Director, Coordination Service.

To: The Director.

Subject: Final Report of Civil Relief Section.

The attached file relative to the above subject is returned with the recommendation that the Finance Service be instructed to return to the surplus fund

Defendant's Exhibit "L"—(Continued)

of the Treasury the amount of $110.64 shown on the statement as the balance of Treasury cash available in the Soldiers' and Sailors' Civil Relief Fund.

Contact has been established with the Insurance Division and you are respectfully advised that it has been ascertained that there will be no further disbursements from this appropriation and an exhaustive study of the records indicate that there will be no further reimbursements. The account is, therefore, considered closed.

/s/ O. W. Clark

File attached

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DEFENDANT'S EXHIBIT "M"

Report of United States Veterans' Bureau

* * * * *

Civil Relief Act

In order to prevent the lapse during the war of insurance carried by soldies and sailors with commercial insurance companies, the act of Congress approved March 8, 1918 (Art. IV, Public No. 103, 65th Cong., H.R. 6361) provided that the Government would, on application, guarantee to companies premiums on such insurance while the insured were in the active service during the World War. The civil relief section was organized to handle this work.

In accordance with the joint resolution of March 3, 1921 (H. Res. No. 312), the provisions of Article

Defendant's Exhibit "M"—(Continued)

IV of the act terminated March 3, 1922. Policies then receiving the benefits of the act passed from under the jurisdiction of the bureau on that date.

The work accomplished by the civil relief section in administering this section of the act may be briefly summarized as follows:

Seven thousand seven hundred and forty-five applications for the benefits provided by the act, representing insurance in an amount of $12,526,956.29, were received and approved. The United States Government guaranteed yearly premiums in an amount of $362,399.50. One hundred and two policies for an amount of $184,006 matured as death claims during the period while the Government was guaranteeing payment of premiums.

An audit has been made of the accounts under the policies that lapsed because of the failure of the insured to reimburse the companies in the amount of premiums, together with interest, protected by the Government. An appropriation of $25,000 was made available by Congress to cover the claims arising under this section of the law. During the past year all these claims in the amount of $19,868.07 have been paid and the bonds in the amount of $195,000 have been returned for cancellation. To date the sum of $349.67 has been recovered as a reimbursement of the appropriation because of the settlement with the insurance companies, making the net amount of all claims $19,518.40.

* * * * *

[Endorsed]: No. 14,499. United States Court of Appeals for the Ninth Circuit. Paul E. Plesha, James E. Mabbutt and Myron L. Kern, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed: September 1, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals
for the Ninth Circuit

No. 14499

PAUL E. PLESHA, JAMES E. MABBUTT, and MYRON L. KERN, Appellants,

vs.

UNITED STATES OF AMERICA,
Respondents.

## STATEMENT OF POINTS ON APPEAL

Appellants Paul E. Plesha, James E. Mabbutt, and Myron L. Kern, hereby state the points on which they intend to rely in their appeal from the judgment of the trial court herein, as follows:

1. That, contrary to the holding of the trial court herein, the Soldiers' and Sailors' Civil Relief

Act of 1940 did not impose on appellants and others who placed policies of private-company life insurance under the protection of Article IV of said Act prior to its amendment in 1942 any liability or obligation to reimburse the United States in any amount for monies paid by the United States in discharge of its obligations relative to such protected policies under said Act.

2. That, contrary to the implied holding of the trial court herein, the 1942 amendments to the Soldiers' and Sailors' Civil Relief Act did not extend the period of protection of policies placed under protection before the enactment of such amendments.

3. That, contrary to the holding of the trial court herein, the measure of the liability, if any, of each appellant and each other person in like position to reimburse the United States for amounts paid by the United States on account of protection of his private-company life insurance was the amount which the United States would have been required to pay to the insurer on account of such protected policy or policies under the Soldiers' and Sailors' Civil Relief Act as enacted in 1940, not the greater amount which the United States actually paid under the provisions of the 1942 amendments to said Act.

4. That if, as impliedly held by the trial court herein, the 1942 amendments to the Soldiers and Sailors' Civil Relief Act had the effect of increasing the burden of any obligation assumed by appellants and others in like position by placing their private-company life insurance under the protection

of said Act (by increasing the period of protection and the rate of interest and by eliminating credits from payments made by or on behalf of other protected policyholders), such amendments deprived appellants and others in like position of their property without due process of law, and took their property for public use without just compensation, all contrary to the Fifth Amendment of the Constitution of the United States.

5. That contrary to the holding of the trial court herein, the United States was not entitled to offset against dividends declared on National Service Life Insurance policies amounts due to it from appellants or others in like position on account of any indebtedness arising from the protection of their private-company life insurance under the Soldiers' and Sailors' Civil Relief Act where such insurance was placed under protection prior to the amendment of such Act in 1942.

Dated: September 7, 1954.

/s/ WHITE, HARBER & SCHEI,
/s/ LAWRENCE A. SCHEI,
Attorneys for Appellants

[Endorsed]: Filed September 8, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

## STIPULATION CONCERNING RECORD

In order to minimize the costs of this litigation it is hereby stipulated and agreed by Appellants and Respondent, through their respective counsel, that Defendant's Exhibits A through O, inclusive, introduced and received in evidence at the trial of this cause, may be considered as part of the record on appeal herein although not designated by either party as part of the record to be printed. It is further stipulated that if Respondent should designate portions of such exhibits to be printed, this stipulation shall apply to the unprinted portions of such exhibits.

Dated September 20, 1954.

/s/ WHITE, HARBER & SCHEI,
/s/ LAWRENCE A. SCHEI,
Attorneys for Appellants
/s/ ROBERT E. WOODWARD,
Assistant U. S. Attorney,
Attorney for Respondent

[Endorsed]: Filed September 21, 1954. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

## DESIGNATION OF RECORD

Appellants, Paul E. Plesha, James E. Mabbutt, and Myron L. Kern, hereby designate as the record,

proceedings and evidence to be printed in accordance with Rule 17 of the Rules of the United States Court of Appeals for the Ninth Circuit, the following:

1. Complaint of Paul E. Plesha.

2. Defendant's Answer to Complaint.

3. Complaints in Intervention of James E. Mabbutt and Myron L. Kern.

4. Defendant's Answer to such Complaints in Intervention.

5. Requests for Admissions numbered 1 through 17(b) and Replies thereto (Exhibits 19 and 19A).

6. Written Interrogatories numbered 1 to 5, inclusive, 7 to 11, inclusive, 15 to 20, inclusive, 24, 26 to 30, inclusive, and 39, and answers thereto. (Interrogatories and Answers are Exhibits 18 and 18A).

7. The following portions of the transcript of the proceedings and evidence at the trial of this action: page 6, line 12, to page 8, line 11; page 12, line 23, to page 19, line 12; page 41, line 12, to page 80, line 14; page 83, line 19, to page 84, line 25; page 85, line 16, to page 116, line 10; page 117, line 12, to page 125, line 24.

8. Exhibits 1 to 13, inclusive, and the following portions of Exhibits 14, 15, 16, and 17:

Exhibit 14 (Plesha's policy No. 419814): All of "Page One" thereof; and those portions of "Page Four" of said Exhibit which follow the headings "How Premiums Are Payable", "Grace for Payment of Premiums", "When Policy Will Lapse", and "How Policy May Be Reinstated After Lapse".

Exhibit 15 (Mabbutt's policy No. 420558): "Page One" thereof, from the top or beginning thereof to the words "such cash payment", such words being the last words under the heading "Guaranteed Options of Settlement at Age 65"; that portion of "Page Three" of said Exhibit which follows the heading "Premiums" beginning with the words "The consideration" and ending with the words "payable hereunder".

Exhibit 16 (Kern's Policy No. 395773): "Page One" thereof, from the top or beginning thereof to the words "such cash payment", such words being the last words under the heading "Guaranteed Options of Settlement at Age 65"; that portion of "Page Three" of said Exhibit which follows the heading "Premiums" beginning with the words "The consideration" and ending with the words "payable hereunder".

Exhibit 17 (Kern's Policy No. 428642): All of "Page One" thereof; and those portions of "Page Four" of said Exhibit which follow the headings "How Premiums Are Payable", "Grace for Payment of Premiums", "When Policy Will Lapse", and "How Policy May Be Reinstated After Lapse".

9. Stipulation of Appellants and Respondent that Defendant's Exhibits A through O, inclusive, may be considered as part of the record on appeal without being printed.

10. Opinion and Order of the Trial Court dated December 23, 1953.

11. Order Admitting Evidence, filed March 25, 1954.

12. Judgment entered March 16, 1954

13. Findings of Fact and Conclusions of Law as modified and filed May 3, 1954.

14. Notice of Appeal, filed June 25, 1954.

15. Designation of Contents of Record on Appeal, filed June 25, 1954.

16. This Designation.

/s/ WHITE, HARBER & SCHEI,
/s/ LAWRENCE A. SCHEI,
Attorneys for Appellants

[Endorsed]: Filed September 21, 1954. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

## COUNTER-DESIGNATION OF RECORD

Appellee, United States of America, hereby designates the following portions of the record to be printed in accordance with Rule 17 of the Rules of the United States Court of Appeals for the Ninth Circuit:

1. The following portions of the Reporter's Transcript of the Proceedings at Trial:

(a) Page 2, line 1 through line 13.

(b) Page 4, line 16 through page 6, line 11.

(c) Page 8, line 12 through page 11, line 4.

(d) Page 11, line 19 through line 23.

(e) Page 12, line 3 through line 22.

(f) Page 19, line 13 through page 41, line 10.

(g) Page 80, line 15 through page 81, line 10.

(h) Page 116, line 11 through page 117, line 11.

2. The following Interrogatories and Answers thereto, including the attachments to such Answers (the Interrogatories and Answers are Plaintiffs' Exhibits 18 and 18A):

(a) Interrogatory and Answer No, 6.

(b) Interrogatories and Answers numbered 32 through 38, but omit Veterans Administration Technical Bulletins TB 4-49, 4-55, 4-56, and also omit Memorandum dated January 15, 1948 (these latter documents being attachments to the Answers to Interrogatories Nos. 36(b) and 36(c)).

3. The following portions of other Exhibits:

(a) From Defendant's Exhibit A:

(1) Letter dated November 14, 1946 from R. D. Peck, Director, Actuarial Service, to Paul E. Plesha.

(2) Letter dated July 21, 1947 from R. D. Peck, Director, Actuarial Service to Paul E. Plesha.

(3) Veterans Administration Insurance Form 380, "Application for Benefits, Soldiers' and Sailors' Civil Relief Act of 1940" (signed by Paul E. Plesha).

(4) Veterans Administration Insurance Form 381, "Report by Insurer, Soldiers' and Sailors' Civil Relief Act of 1940" (signed by California-Western State Life Insurance Co.)

(b) From Defendant's Exhibit B:

(1) "Notice to Insured to Remit Amount Stated in Column (4) Below," dated Feb. 13, 1948.

(2) Letter dated March 11, 1948 from Paul E. Plesha to Veterans Administration.

(3) Letter dated May 7, 1948 from A. J. Johnston, Director, Payees Accounts Service, to Paul E. Plesha.

(4) Undated handwritten letter from Paul E. Plesha, beginning "Dear Sirs: In reference to the enclosed letter I submit the following information * * *"

(5) Letter dated August 10, 1948 from O. O. Fleming, Director, Payees Accounts Service, to Paul E. Plesha.

(6) Letter from Paul E. Plesha, beginning "Dear Sirs: Enclosed is the first * * *"

(7) Letter from Paul E. Plesha to Treasurer of the United States, beginning "Enclosed Please find check to cover $10.00 * * *"

(8) Letter from Paul E. Plesha to Treasurer of the United States beginning "Dear Sir: Enclosed is a check to cover Nov. and Dec. payments * * *"

(9) Letter dated February 17, 1950 from O. O. Fleming, Director, Payees Accounts Service, to Paul E. Plesha.

(c) From Defendant's Exhibit L—Print the following portions only:

(1) Memorandum dated December 15, 1925, from D. W. Clark to "The Director."

(2) Memorandum dated December 10, 1925, from "Chief, Insurance Division" to "The Director."

(3) Pages numbered 6 and 7, beginning "Soldiers' & Sailors' Civil Relief Fund, Statement of Account, Claims Paid to Insurance Companies." But omit everything after these latter words on p. 6 up to the words "Reimbursements by Assureds" on p. 7.

(4) Memorandum dated December 9, 1925, from Harold W. Breining to "Chief, Insurance Division." One page numbered 4.

(5) One page, numbered 5, beginning "Summary."

(6) Memorandum dated November 10, 1925, from "Chief, Disbursing Division" to "Insurance Division, Attention Mr. Sasser."

(d) From Defendant's Exhibit M:

(1) Print line 1, reading "Report of United States Veterans' Bureau."

(2) Omit first full paragraph, beginning "Section 27 of the new act * * *"

(3) Print the heading "Civil Relief Act" and the five paragraphs which follow it.

(4) Omit the heading "Marine and Seaman's Insurance" and the 5 lines which follow it.

4. This Designation.

LLOYD H. BURKE,
United States Attorney,
/s/ By LESTER S. JAYSON,
Attorney, Department of Justice, Washington 25, D. C., Attorneys for United States, Appellee.

Acknowledgment of Service attached.

[Endorsed]: Filed September 30, 1954. Paul P. O'Brien, Clerk.

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# In the Supreme Court of the United States

OCTOBER TERM, 1955

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UNITED STATES OF AMERICA, PETITIONER

v.

PAUL E. PLESHA, JAMES E. MARBUTT AND MYRON L. KERR

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

SIMON E. SOBELOFF,
*Solicitor General,*
WARREN E. BURGER,
*Assistant Attorney General,*
SAMUEL D. SLADE,
LESTER S. JAYSON,
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*Attorney,*
*Veterans Administration,*
*Washington 25, D. C.*

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# In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, PETITIONER

*v.*

PAUL E. PLESHA, JAMES E. MABBUTT AND MYRON L. KERN

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgments entered in this case on November 30, 1955, and on January 5, 1956, by the United States Court of Appeals for the Ninth Circuit.

### OPINIONS BELOW

The opinion of the District Court (R. 110-123) is reported at 123 F. Supp. 593. The opinion of the Court of Appeals (Appendix A, *infra*, pp. 21-31) is reported at 227 F. 2d 624. A supplemental *per curiam* opinion of the Court of Appeals (Appendix A, *infra*, p. 32) is not officially reported.

## JURISDICTION

The judgment of the Court of Appeals as to respondent Plesha was entered on November 30, 1955 (Appendix A, *infra*, pp. 31-32); its judgment as to respondents Mabbutt and Kern was entered on January 5, 1956 (Appendix A, *infra*, p. 33). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether, under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, former servicemen are obligated personally to reimburse the United States for its payment of defaulted premiums on their commercial life insurance policies after they requested that, pursuant to that Act, their policies be protected against lapse during their period of military service.

## STATUTES INVOLVED

The pertinent parts of the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, 50 U.S.C. App. (1940 ed.) 510, *et seq.*, and of its 1942 Amendment, 56 Stat. 769, 50 U.S.C. App. 541-548, are set forth in Appendix B, *infra*, pp. 33-47.

## STATEMENT

Respondents, former servicemen, brought this suit against the United States to recover amounts which had been withheld by the United States from a special dividend declared on their National Service Life Insurance Policies (government insurance for servicemen). The United States had withheld the amounts by way of set-off applying the

sums to reimburse itself for payments of premiums it had made to a commercial life insurance company which had issued life insurance policies (non-government insurance) to the respondents shortly before they entered the military service. After entering the service, respondents, by filing appropriate applications with their insurance company and the Veterans' Administration, brought their commercial policies under the protection of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. (1940 ed.) 540-554, *infra*, pp. 33-42. That Act permitted servicemen to protect their commercial life insurance policies against lapse for non-payment of premiums, during their periods of military service and for one year thereafter, by invoking certain of its provisions under which the United States, upon the serviceman's application, would keep such policies in force, despite default in the payment of premiums, by guaranteeing payment of such premiums. Respondents later failed to pay the premiums becoming due on their commercial policies during their period of military service and for more than a year following their discharge from the service. Pursuant to its guaranty under the Civil Relief Act, the United States paid these defaulted premiums to their insurance company.

The detailed facts relating to respondent Plesha, which are essentially the same as those concerning respondents Mabbutt and Kern, are as follows:

Three months before he entered active service in the United States Army, Plesha obtained a $2,-

500 policy on his life from the California-Western States Life Insurance Company. Immediately after his entry into the service in March 1941, Plesha made proper application to bring this policy within the protection afforded by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, *infra*, pp. 34-41. His insurer submitted appropriate forms, which were approved by the Veterans' Administration, and the protection provided by the Act was extended to his commercial insurance policy effective March 6, 1941. (R. 126.)

Thereafter, Plesha failed to pay premiums on his commercial life insurance policy (R. 127), but because that policy was under the protection of the Soldiers' and Sailors' Civil Relief Act it did not lapse. See Sec. 405, *infra*, p. 37. Plesha was separated from the service on October 20, 1945 (R. 126). When the Veterans' Administration learned of his separation, it sent him VA Form Letter FL 9-63 (R. 287-289) advising him (a) that he might terminate the protection being afforded his private insurance under the Civil Relief Act or continue such protection until two years after his discharge date;[1] (b) that any premiums accruing on his private policy but not paid by him during the period of protection would, upon an accounting, become an

[1] Under the 1942 Amendment of the Civil Relief Act, the period of protection was enlarged from one to two years following the insured's discharge (see Section 403, as amended, *infra*, p. 44). We are informed by the Veterans' Administration that persons who had obtained protection under the original Act were automatically given this extended protection unless they expressed a contrary desire. See R. 287-289.

indebtedness which he would owe his insurance company, subject to any credit allowed by the company for the then cash value of the policy; and (c) that the Government guaranteed the payment of this amount to the insurance company, and that any amount not paid by him to the company would be paid by the United States "to whom you will then owe whatever payment the Government made on your account." (R. 126-127.) Hearing nothing from Plesha, the Veterans' Administration terminated the protection of his private policy on October 20, 1947, two years after his discharge (R. 127).

Thereafter, Plesha's insurer, California-Western States Life Insurance Company, reported to the Veterans' Administration that Plesha's defaulted premiums, with interest at the policy loan rate (6% compounded annually) for the period the policy had been protected, aggregated $343.93; that after crediting the cash surrender value of $82.88 there remained a balance of $261.05 subject to payment by Plesha or the Government. On January 2, 1948, a United States Treasury check in that amount was drawn and dispatched to the Company. (R. 127.)

During the following month, Plesha was informed of this payment to his insurer and was notified that this amount represented a debt due by him to the Government (R. 127). In March, he wrote to the Veterans' Administration stating he was not in a position to make payment and asking what mode of payment he could use "in order to take care

of this obligation." He was told that he might discharge the obligation by making payments of $10 per month initially and later in increased amounts so as to "liquidate the entire indebtedness" within a year. Plesha accepted this plan of payment. Thereafter, he forwarded three checks totalling $40 which were credited to his account by the Veterans' Administration. There remained an unpaid balance of $221.05. (R. 127-128.)

Meanwhile, in May 1942, while he was in the service, Plesha was issued a government life insurance policy, under the National Service Life Insurance Act, in the amount of $10,000.[2] This policy was maintained in force by Plesha's payment of premiums until November 30, 1945. (R. 3-4.) In 1950, the Veterans' Administration determined that Plesha's NSLI policy was entitled to participate in a special dividend to the extent of $233.75, but it withheld payment of $221.05 because of its determination that he was indebted to the United States in that amount for the protection afforded his private policy under the Civil Relief Act (R. 128). It paid him the $12.70 difference, informing him that his indebtedness was thereby liquidated (R. 129), whereupon Plesha instituted this suit for the amount withheld.[3]

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[2] On November 1, 1945, this NSLI policy was reduced in amount to $5,000 (R. 4).

[3] Respondents Mabbutt and Kern, like respondent Plesha, prior to their entry into the service, had been issued policies by the California-Western States Life Insurance Company, the same insurer as in the case of Plesha. Both brought their policies under the protection of the Civil Relief Act of 1940

The District Court held (R. 110-123; 123 F. Supp. 593) that the United States, at respondents' request, had guaranteed the payment of their defaulted premiums; that as a guarantor the United States was entitled to reimbursement under common law principles; and that the legislative history of the 1940 Act fails to show a Congressional intent to abrogate this common law right of reimbursement on the part of the United States. The District Court further held that 38 U.S.C. 454a (which prohibits the United States from off-setting debts against veterans' benefits except in cases of overpayment) was no barrier to the set-off here because the payment of premiums constituted an "overpayment" within the meaning of that section.

The Court of Appeals for the Ninth Circuit reversed (Appendix A, *infra*, pp. 21-31, 227 F. 2d 624). The court observed that there was no express provision in the Civil Relief Act, in the regulations issued thereunder, or in the application form signed by the serviceman, requiring reimbursement

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and later defaulted in the premium payments. Pursuant to its guaranty, the United States subsequently paid the net amounts due on their accounts to their insurer, and then requested each insured to make reimbursement which they failed to do. And like Plesha, both Mabbutt and Kern had been issued $10,000 NSLI policies which, in 1950, were entitled to participate in a special dividend. The United States withheld $205.75 from Mabbutt's dividend, and $302.06 from Kern's dividend, as an off-set and in liquidation of the amounts, in excess of the respective cash surrender values of their commercial policies, owed by them to the United States for its payment on their behalf to protect such policies from lapse. (R. 129-135.) Their complaints likewise seek the amounts thus withheld (R. 28, 31).

of the difference between the surrender value of the policy and the premiums paid by the Government. It then pointed to the difficulty in determining the amount the United States may have expended on behalf of any particular policy,[4] and to a possible profit that it might make from the difference in interest rates.[5] In conclusion, the court held that the legislative history of the 1940 Act with reference to a Congressional purpose to require reimbursement of such amounts was too inconclusive to overcome the rule that statutes conferring benefits on servicemen should be liberally construed in their favor. The court construed the 1942 Amendment of the 1940 Act, which declares that amounts paid by the United States to an insurer shall be a debt due to the United States by the insured, to be a modification, rather than a clarification, of that Act. Finally, the court held that under the theory of *United States* v. *Gilman*, 347 U.S. 507,[6] the court must "not find common law liability in favor of the Government where it is not provided for in the statute, where it is not an 'established type of liability', and where the legislative history is in-

[4] See *Hormel* v. *United States*, 123 F. Supp. 806 (S.D.N.Y.) (pending on appeal).

[5] The United States settled with the insurer on the basis of certificates issued to the insurer which bore interest at 3% (see fn. 16, *infra*, pp. 16-17). The insured's obligation, however, was asserted to be for the amount of unpaid premiums plus interest at the policy loan rate, which averaged between 4% and 6%.

[6] In the *Gilman* case, this Court held that the United States, after having been held to be liable for damages in a Tort Claims Act suit, could not maintain a suit against its negligent employee to recover indemnity.

conclusive as to whether Congress intended such a liability" (*infra*, p. 30).[7]

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is squarely in conflict with that of the Tenth Circuit, rendered only four months earlier in *United States* v. *Hendler*, 225 F. 2d 106,[8] on a question which continues to be of importance in the administration of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 because of the numerous existing claims depending upon the interpretation of the identical provisions of the 1940 Act, prior to their amendment in 1942.

The court below recognized the conflict with the

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[7] The principal opinion, filed November 30, 1955, referred only to the claim of respondent Plesha. In a supplemental *per curiam* opinion filed January 5, 1956 (Appendix A, *infra*, p. 32), the court reversed the judgment as to respondents Mabbutt and Kern for the reasons stated in the earlier opinion.

[8] It is also contrary to two decisions by the Administrator of Veterans' Affairs which formally determined the agency's position on the question and fixed the administrative practice which has been followed since 1943. *Decisions of the Administrator of Veterans' Affairs, No. 513* (March 1, 1943) (Vol. I, p. 781; *id.*, No. 742 (April 1, 1947) (Vol. I, Supp. p. 93) (set out at R. 62-94). It is contrary also to two district court opinions in two other circuits, *United States* v. *Nichols*, 105 F. Supp. 543 (N.D. Ia.), appeal dismissed, 202 F. 2d 956, 958 (C.A. 8), and *Morton* v. *United States*, 113 F. Supp. 496 (E.D.N.Y.). *Hormel* v. *United States*, 123 F. Supp. 806 (S.D.N.Y.), the only other reported decision on the question apart from those mentioned above, and apart from the District Court opinions in *Hendler* and in the present case, accords with the decision of the court below in this case. The United States has filed a notice of appeal to the Second Circuit in *Hormel*.

Tenth Circuit, explaining its disagreement on the ground that in the *Hendler* case the court had failed to apply a "rule of liberal interpretation for the veteran" (*infra*, p. 31). The latter case was an action for reimbursement brought by the United States against a former serviceman whose defaulted premiums on his life insurance policy had, at his request, been paid by the United States, under the 1940 Act, and the surrender value of his policy was insufficient to equal the payments so made. The defendant moved to dismiss the complaint for failure to state a cause of action. The District Court, while indicating that morally the United States was entitled to reimbursement, held that the principle enunciated by this Court in *United States v. Gilman*, 347 U. S. 507, precluded recovery, and granted the motion for dismissal. On appeal, the Tenth Circuit reversed. Reviewing at length the legislative history of the 1940 Act and that of its earlier counter-part, the Soldiers' and Sailors' Civil Relief Act of 1918 (40 Stat. 440), the court held that Congress intended the transaction to be one of guaranty, that Congress did not envisage the Government's payment of a serviceman's defaulted premium to constitute a gratuity, but, instead, expected that there would be reimbursement under the usual rules of guarantyship. The Tenth Circuit ruled that it was not the purpose of the 1942 Amendment of the 1940 Act (which specifically characterizes the transaction as a guaranty and declares that a debt arises, Section 406, as amended, *infra*, pp. 45-46) to effect any change in the basic

law in that respect. The *Gilman* case was distinguished and its doctrine held to be inapplicable.

By its terms, the 1942 Amendment kept the provisions of the original Act in force with respect to policies that had been given protection before October 6, 1942, the date of its enactment (Sec. 408 (1), *infra*, pp. 46-47). Through June 30, 1942, the Veterans' Administration had approved more than 23,400 applications for protection of commercial life insurance policies under Article IV of the 1940 Act, representing insurance in the face amount of over $56,500,000; by that date (an early one in view of the fact that the period of protection continued until well after the insured left the military service) the Government had issued certificates to insurers guaranteeing defaulted premiums in the amount of almost $1,017,000. *Annual Report of the Administrator of Veterans Affairs for the Fiscal Year Ending June 30, 1942*, p. 31. While we are unable to state precisely the total number of claims for reimbursement which are now outstanding, the number is undoubtedly large.[9]

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[9] The Veterans' Administration advises us that exact statistics concerning the more than 23,000 approved applications cannot be obtained without a file-by-file examination of its individual serviceman's records. This is largely due to the fact that all applications under the 1940 Act filed by insurers who later elected to make settlement under the provisions of the 1942 Amendment (see Sec. 408(2), *infra*, p. 47) lost their identity as 1940 cases in VA's records, since they were thereafter handled administratively much like 1942 cases, that is, these insurers surrendered all certificates on hand, no longer filed Monthly Difference Reports, and VA issued no adidtional certificates to them.

The Veterans' Administration also informs us that more than 4,700 certificates, representing defaulted premiums in

Since March 1943, when the Veterans' Administration formally ruled that a debt rather than a gratuity resulted from the Government's payment of the insured's defaulted premiums, [10] it has been the consistent administrative practice to seek reimbursement after the United States, pursuant to its guaranty, has made payment to the insurer. There is also a record that reimbursement was similarly

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excess of $3,082,000, were issued under the provisions of the 1940 Act. Of these, upwards of 2,400 certificates, representing over $900,000, were revoked and reissued in smaller amounts from time to time as a result of payments made, reducing to some extent the outstanding indebtedness due the insurers. More than 200 certificates in the aggregate amount of almost $2,065,000 were surrendered by insurers pursuant to the terms of Section 408(2) of the 1942 Amendment, *infra*, p. 47, prior to January 6, 1943. Under the 1942 Amendment, the complicated monthly report and ultimate settlement system of the 1940 Act was largely discarded. The United States, after the Amendment, simply paid the insurance company the difference between (a) the cash surrender value and (b) the amount of defaulted premiums plus interest at the policy loan rate. Payment was made on a per policy basis when the policy lapsed. See Section 406, *infra*, pp. 45-46. As to policies already protected under the 1940 Act, the company could elect to settle under the simpler method of the 1942 Amendment; if it failed so to elect within 90 days after enactment of the Amendment, the old method of settlement was retained. See Section 408(2), as amended, *infra*, p. 47.

Additionally, certificates (not surrendered under the 1942 Amendment) in the amount of over $53,000 plus interest have already been redeemed, and there are almost $60,000 in certificates still outstanding.

[10] *Decisions of the Administrator of Veterans' Affairs, No. 515* (March 1, 1943), Vol. I, p. 781. The question was carefully and extensively reexamined by the Administrator, who reaffirmed his earlier ruling, in *Decisions, supra, No. 742*, Vol. 1, Supp., p. 93 (set out at R. 62-94).

sought and obtained under the 1918 Act.[11] Many collections under the 1940 Act have been effected administratively through the years; where payment might cause hardship, arrangements have been made for payment on the installment plan, as in the case of respondent Plesha (see *supra*, p. 6); and, in numerous instances, payment was effected by set-off against NSLI dividends. If the decision below is permitted to stand, the propriety of all of these payments and collections will be shrouded in doubt.

Over 325 claims for reimbursement, in which the insured servicemen have refused payment, have already been referred to the Department of Justice by the General Accounting Office for litigation to enforce collection. These claims arise in every judicial circuit in the country. The Veterans' Administration estimates that there are hundreds, possibly thousands, of other outstanding claims which may have to be similarly referred. While a few suits have been filed on the claims previously referred to the Department of Justice for collection, in most instances the Government has deferred instituting litigation pending clarification by the courts as to the respective rights of the parties. In that connection, the *Hendler* case, *supra*, and the instant case have been regarded as test cases, because these were the first to reach the

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[11] *Decisions of the Administration of Veterans' Affairs, No. 742*, Vol. 1, Supp., p. 93, 98; *Report of the United States Veterans' Bureau* (1924), p. 445.

appellate level. Resolution of the existing conflict is therefore essential to a uniform disposition of the many like claims; in the absence of an authoritative ruling by this Court, suits will probably have to be instituted and the identical issue litigated in numerous districts and circuits.[12]

2. It is the position of the Government that the decision of the Ninth Circuit below is erroneous, and that the conclusion of the Tenth Circuit in the *Hendler* case is correct. Under the decision of the court below, an insured, although he may keep his insurance in full force without paying premiums by the mere filing of an application, has the option to pay or not to pay the defaulted premiums. If he does not pay them and if the cash surrender value of his policy is not sufficient in amount to meet them, he is without personal obligation to pay the difference, despite the fact that he has had value received in the form of full insurance protection during the period involved.

This result, we submit, is contrary to the express purposes of the 1940 Act. Those purposes are stated in Section 100, *infra*, p. 34, to be the "*temporary suspension* of legal proceedings and *transactions* which may prejudice the civil rights of persons in such service during the period herein specified" [emphasis added]. And nowhere in the statute is there disclosed a purpose that the Act

[12] A notice of appeal to the Court of Appeals for the Second Circuit has already been filed in *Hormel* v. *United States*, 123 F. Supp. 806 (S.D.N.Y.), which raises precisely the same issues as the instant case.

shall do other than temporarily defer the enforcement of a serviceman's legal obligations.[13] The extending to a serviceman of a gratuitous benefit in the form of a complete cancellation of his personal obligation to pay ultimately the premiums on his validly enforceable insurance policy is not in harmony with this purpose, and an intention to accomplish that result should not, therefore, be read into the statute in the absence of express language.

Moreover, the extending of such gratuitous benefits is a result which Congress endeavored to avoid when it enacted the Soldiers' and Sailors' Civil Relief Act of 1918 (40 Stat. 440), the substantially identical predecessor of the 1940 Act.[14] The legislative history of the 1918 Act shows that Congress did not intend that Article IV of that statute would permanently cancel a serviceman's legal obligation to pay his premiums in full where the insurance is kept in force by the provisions of the Act upon his application and consent.[15]

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[13] The Act covers a variety of subjects, relating to servicemen, other than commercial insurance policies, such as stay of court proceedings and execution, non-eviction of servicemen's dependents, suspension of mortgage foreclosures and installment contracts, extensions of statutes of limitations, etc., all of which are matters of deferment only and not outright cancellations of obligations or liabilities. 54 Stat. 1180-1183.

[14] Since the 1940 Act is a substantial reenactment of the 1918 Act, recourse to the history of the earlier Act is, of course, pertinent in construing the later statute. *Boone* v. *Lightner*, 319 U.S. 561, 565-569.

[15] When the bill (S. 2859, 65th Cong., 1st sess.) which later became the 1918 Act was originally introduced, Section 13 merely prohibited the lapse of insurance policies of servicemen

Although Article IV of the 1940 Act does not expressly characterize as a guaranty the transaction whereby the Government undertook the payment of a serviceman's premiums if he should not pay them, that transaction was plainly a guaranty. [10] And it is, of course, an elementary rule of

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for non-payment of premiums and provided that the defaulted premiums should be charged to the policy as a loan which might be paid with interest at the policy loan rate within six months after the termination of the serviceman's military service. Spokesmen for insurance companies objected to this feature of the bill because it failed to provide a consensual and enforcible obligation; they argued that if they continued to extend insurance to the serviceman, they would have no enforcible claim against the insured, because the insured had not requested that his policy be kept in force. *Hearings and Memoranda on S. 2859 and H.R. 6361*, 65th Cong., 1st and 2d sess., p. 102 *et seq.* To met this objection, the bill was revised so as to provide in substance, for a binding obligation from the insured to the insurer for premiums becoming due but not paid while the insured was in military service, plus a guaranty by the United States that these defaulted premiums would be paid. The revised bill ultimately became Article IV of the 1918 Act (see *ibid.*; H. Rep. No. 181, 65th Cong., 1st sess., p. 7), and its provision finally were reincorporated, with slight changes, in the 1940 Act. See H. Rep. No. 3001, 76th Cong., 3d sess., p. 3; S. Rep. No. 2109, 76th Cong., 3d sess., p. 3.

[10] The transaction was, in substance, carried out as follows: The protection of the Act was available only to those servicemen who filed an application with their insurer and a copy thereof with the Veterans' Administration. The form of the application is set forth in 38 C.F.R. (1941 Supp.) 10.3300. The application form required the serviceman to state specifically that the application "is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article [Article IV]." Section 401, infra, p. 35. Upon receipt of the application form, the insurer filed a report on the insurance policy with the Veterans' Administration, 38 C.F.R. (1941 Supp.) 10.3300, 10.3301. By receiving and filing the application, the insurer was also deemed to have consented to any necessary modification of the policy. Section 401, *infra*, p. 35. The Veterans'

the law of guaranty that where a third person has, at the request of a principal debtor, paid the indebtedness, the principal debtor is obligated to reimburse the guarantor. Even in the absence of an express contract, he is impliedly bound to reimburse his guarantor. 4 *Williston on Contracts* (Rev. Ed.), p. 3635; 24 Am. Jur. 956. This accepted rule refutes the indication of the court below that there is no "established type of liability" (*infra*, p. 30) in the circumstances of this case. And the holding of the court below that the United States is limited to the remedies mentioned in the Act (*i.e.*, a first lien upon the policy, Sec. 408, *infra*, p. 39) is likewise unsupported, for there is nothing in the Act to show a Congressional purpose so to limit the Government's remedy, and the lien itself indicates a Congressional intent not to provide gratuitous insurance or to cancel the serviceman's legal liability. *United States* v. *Nichols*, 105 F. Supp. 543, 547 (N.D. Ia.). The lien is a summary remedy, a device utilized for the purpose of giving the United States greater security against possible

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Administration then determined whether the applying serviceman was eligible for protection under the Act. Protection was limited to certain types of insurance not exceeding a stated amount. Sections 402-404, *infra*, pp. 35-37. The Act provided for monthly accounting between the insurer and the Government, the insurer reporting information concerning the policies on which premiums had or had not been paid. Section 406, *infra*, pp. 37-38. The Veterans Administration would then deliver to the insurer a certificate for the unpaid premiums with interest. The insurer kept the certificates until the expiration of one year after the Act ceased to be effective, when a final accounting was had between the insurer and the Government, at which time the certificates were paid. See Sections 411, 412, 604, *infra*, pp. 40, 41, 42.

loss, and is not inconsistent with the common law remedy of reimbursement. A common law remedy is not ordinarily regarded as taken away by statute except by express enactment or necessary implication. *Shriver* v. *Woodbine Bank,* 285 U. S. 467, 478-479; *United States* v. *Chamberlin,* 219 U. S. 250; *United States* v. *Stevenson,* 215 U. S. 190, 197-199.

It also seems pertinent to note that the interpretation placed by the court below on Article IV of the 1940 Act produces inequitable, if not discriminatory, results. See Decisions of the Administrator of Veterans' Affairs, Decision No. 742, (Vol. 1, Supp. 93) (R. 62, 86-89.) For example, servicemen such as respondents who survived the war and permitted their policies to lapse, were, under the interpretation of the court below, entitled to receive a gratuity if the cash surrender value of their policies was not sufficient to reimburse the United States, for they received full insurance protection for the periods involved without paying the full premium. But under the decision below, those former servicemen who did not desire their policies to lapse after the expiration of the period of protection provided by the Act, were entitled to no gratuity at all. For the Act obliged them to pay their defaulted premiums in full (plus interest at the policy loan rate) if their policies were to be kept in force beyond the protection period (see Section 410, *infra,* p. 40). If a serviceman died while the policy was under protection, his widow, beneficiary, or estate was not entitled to

receive the gratuity because the Act provides that in such event the defaulted premiums (with interest) shall be deducted from the proceeds of the policy, which are always sufficient to pay the premiums (see Section 409, infra, pp. 39-40).[17] And the servicemen covered by the 1942 Amendment would not receive the gratuity even if, like respondents, they permitted their policies to lapse at the end of the protected period (see Section 406, as amended, *infra*, pp. 45-46). In short, only respondents' special class would receive a gratuity.

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[17] Additionally, it is interesting to note that only nine days before the passage of the Civil Relief Act of 1940, Congress had enacted the National Service Life Insurance Act of 1940 (54 Stat. 1008-1014), providing for government life insurance for servicemen but requiring that they pay premiums thereon. It seems unlikely that Congress, after having passed an Act requiring servicemen to pay for government life insurance, would nine days later turn around and provide a certain group of servicemen with what in substance would be free life insurance protection with commercial insurance companies whose policies carried higher premium rates than government policies. See *United States* v. *Nichols*, *supra*, 105 F. Supp. at page 558.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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WARREN E. BURGER,
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SAMUEL E. SLADE,
LESTER S. JAYSON,
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FEBRUARY, 1956.

APPENDIX A

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14499

Nov. 30, 1955

PAUL E. PLESHA, APPELLANT

*vs.*

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Northern District of California, Northern Division

Before: DENMAN, Chief Judge and ORR and POPE, Circuit Judges.

DENMAN, Chief Judge:

This is an appeal from a judgment denying appellant, a veteran of the Second World War, recovery of $221.05, the unpaid portion of a special dividend due appellant under the provisions of his National Service Life Insurance policy. The District Court denied recovery, setting off that amount as owed by appellant to the Government for his obligation to reimburse it for sums paid to the California Western States Life Insurance Company to compensate it for coverage extended to appellant during World War II under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940. [54 Stat. 1178, 1179, 1183-1186; 50 U.S.C. Appendix §§510, 540-554 (1940 ed.)]

That Act provided, in part, that no insurance policy taken out before military service would lapse for the nonpayment of premiums while the insured was in service. If the serviceman died and the policy matured, all the unpaid premiums plus interest at the policy loan rate were to be deducted from the payment to the beneficiaries. If the serviceman desired to continue his policy after discharge, and he had not paid premiums while he was in service, he was required to pay all the back premiums plus interest at the policy loan rate. If, as here, the serviceman allowed his policy to lapse after discharge and did not pay the back premiums within one year after his discharge the United States would compensate the insurer. The Government would receive credit for the cash surrender value of the policy.

The United States contends that the lower court lacked jurisdiction to consider appellant's claim because no provision of the National Service Life Insurance Act created jurisdiction in United States District Courts to entertain actions for National Service Life Insurance dividends. See 38 U.S.C. §§817, 445 as construed by Candell v. United States, 189 F.2d 442 (Cir. 10, 1951). Assuming this contention to be true, it cannot be said that Congress intended 38 U.S.C. §§817, 445 to be the exclusive source of jurisdiction for claims to such dividends,[1] and it is obvious that such jurisdiction was created

[1] Congress vested exclusive jurisdiction in the District Courts under 38 U.S.C. §§817, 445 to determine claims to benefits for contingencies insured against. Peyton v. United States, 100 F. Supp. 823 (Ct. of Claims), cert. denied, 343 U.S. 909 (1952). There is no insurance on the dividends here claimed.

by the Tucker Act, 28 U.S.C. §1346 (a) (2), which provides:

> "The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> * * * * *
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." [2]

The question here is did the Soldiers' and Sailors' Civil Relief Act of 1940 create a personal liability between a veteran and the United States where the veteran had allowed his policy to lapse after discharge and the United States had compensated his insurer for its coverage during the Second World War.

The District Court applied a rule of interpretation of the ambiguous provisions of the legislation and the Congressional comment thereon adverse to the veterans for whom the legislation was created, classifying them as amongst those who are engaged "in an attempt to syphon off some more of this nation's already fast ebbing fisc".

With this we do not agree. Rather we think

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[2] See Morton v. United States, 113 F. Supp. 496 (E.D. N.Y. 1953); Hormel v. United States, 123 F. Supp. 806 (S.D. N.Y. 1954), construing the same provision for jurisdiction.

Congress was contemplating the veterans incapacitated by bullet-inflicted wounds, or weakness from treatment while held as enemy prisoners and those having families and dependents to support in occupations lost with their savings exhausted during their war activities and the physicians and dentists who have lost their patients and the lawyers who have lost their clients and the business men who have lost their enterprises.

This we think is what the Supreme Court also had in mind when it established its rule of liberal construction favorable to the veteran in construing the Soldiers' and Sailors' Civil Relief Acts. "The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." Boone v. Lighter, 319 U. S. 561, 575 (1943); Le Maistre v. Leffers, 333 U. S. 1, 6 (1947).

The Soldiers' and Sailors' Civil Relief Act of 1940 contained no provision for reimbursement of the United States where it had compensated the veteran's insurance company for coverage given to him while he was in service. There were no provisions specifying when the United States was to be repaid, how it was to be repaid, or how much it was to be repaid. The form on which appellant applied to have his policy protected by the Act, which was prepared by the Veterans Administration, stated only as follows regarding reimbursement of the United States:

> "In consideration hereof, I hereby consent and agree that the United States shall be protected in the amount of any premiums and interest

guaranteed on the above numbered policy in the event of its maturity as a claim, or out of the cash surrender value of the policy, at the expiration of the period of protection under the Act."

The serviceman bringing his policy under the protection of the Act could have read the Act, the Regulations under it and this application form without finding anything to indicate that he was personally liable to reimburse the United States for sums it paid his insurance company in the event he did not continue the policy and pay the back premiums within a year from his discharge.

The theory of the United States is that the Soldiers' and Sailors' Civil Relief Act of 1940 created a contract of guaranty between the insured serviceman, his insurer and the Government, or that the United States is entitled to recover on an implied contract for paying the serviceman's insurance premiums at his request. In short, the gaps in the Act are to be filled in by resort to the common law. The United States points to Section 408 of the Act which provided:

"To idemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien."

t urges that a lien is only a security device to enforce a debt rather than a remedy, and so Congress

must have intended a common law debt to arise between the veteran and the Government. However, the lien provision could have been intended only as a protection of the Government's interest in the cash surrender value of the policy which was credited to it if the veteran did not continue the policy by paying the back premiums within one year after his discharge.

There is an element within the Act which weakens the Government's theory of a common law right to reimbursement. Congress provided that insurance companies were to be compensated one year after the date when the Act ceased to be in force. There was to be a running balance of charges against the United States and credits to it. The United States was to be charged with the unpaid premiums of servicemen who held policies with a particular company covered by the Act. It was to be credited with the amount of unpaid premiums plus interest at the policy loan rate (this averaged 4 to 6% per annum) if a serviceman died, and the policy matured entitling the insurance company to deduct this amount from the benefits paid, or if a serviceman reinstated the policy upon discharge and paid the back premiums plus interest. At the end of each month a monthly difference was taken, and if the United States owed a company money, a certificate bearing interest at 3% was to be issued to it. As a result of compensating insurance companies on certificates based on the total experience of a particular company with all the servicemen who held its policies covered by the Act, it is difficult to determine the amount the United States actually expended on any individual veteran. Furthermore, the United States might make a profit if

it recovered the back premiums plus the policy loan rate as it claims here. Reinstatements and deaths of those covered by a particular company's policies might offset the amount of back premiums unpaid at the time of final accounting. Because of this situation the Court in Hormel v. United States, 123 F. Supp. 806 (S.D. N.Y. 1954) found that Congress had not intended to create a personal liability to reimburse the United States where a veteran had not paid the back premiums on his policy within one year after discharge.

The United States argues that profit was unlikely since the cash surrender values of the policies covered under the Act were built up during the War, and even if some profit resulted, a common law guarantor is entitled to a charge for his services. While this may be true, such provisions for compensating insurance companies in the act make the Government's theory of common law liability doubtful.

Appellant contends that the United States cannot enforce a common law right to reimbursement unless specifically authorized to do so by statute. They rely on United States v. Gilman, 347 U. S. 507 (1954). There the United States, having been held liable for the negligence of its employee in a suit under the Federal Tort Claims Act, sued to recover indemnity from that employee. The Court held that the United States could not recover. There were delicate policy questions of the relationship between the Government as an employer and its employee better decided by Congress than courts. The legislative history did not convince the Supreme Court that Congress had intended to create such a common law right of reimbursement.

The Gilman case does not preclude the Government's common law recovery here. However, the relationships between the United States and its servicemen and veterans cannot be said to be totally unlike that between it and its civil servants in so far as imposing personal liability is concerned. The Gilman case, and the rule of liberal construction in favor of servicemen and veterans previously discussed, require a strong showing from the legislative history that Congress intended to impose a personal liability for reimbursement not spelled out in the statute.

We are unable to find such a strong showing from the legislative history that Congress intended to impose a common law liability on veterans who did not pay their back insurance premiums plus interest within one year after their discharge from service.

The Soldiers' and Sailors' Civil Relief Act of 1918 [40 Stat. 440, 444-447] contained the same insurance provisions as the 1940 Act. As originally drafted it provided that policies would not lapse for nonpayment of premiums while the insured was in service, and that the premiums would be considered a loan against the policy's cash surrender value. The insurance industry objected since this would give the veteran an option whether to pay the back premiums or not, and leave the insurers without a means to assure themselves of compensation for the risks they had taken. The provisions under consideration here were designed to meet that objection. However, this history could support either the view that the veteran's option to pay or not pay his back premiums had been taken away or the view that the option had been left,

but the insurance companies were assured that they would receive compensation from either the veteran or the Government. There is reason to believe that the draftsman of the 1918 bill thought that the cash surrender value which was subject to the Government's lien would be sufficient to recoup whatever the Government might have to pay out. See Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d Sess., on S. 2859 and H.R. 6361, p. 134-135. Veterans Administrator's Decision No. 742 summarizes our conclusions about the 1918 legislative history:

> "It is equally true that statements may be abstracted from the hearings which tend to support arguments that the transaction did and that it did not create a debt."

The 1940 legislative history is equally as indefinite. There is a debate on the floor of the House between Mr. Voorheis and Mr. Arends, the floor manager of the bill, wherein it is stated several times that the veteran will have to reimburse the Government for payments made to his insurance company. 86 Cong. Rec. pp. 13132-13133. On the other hand, Senate Report on the 1940 bill indicates that the Government is to be reimbursed only from the cash surrender value of the policy. S. Rep. No. 2109, 76th Cong., 3d Sess., p. 3.

In 1942 the Soldiers' and Sailors' Civil Relief Act was amended to specifically provide for personal liability on the part of the veteran for amounts paid by the United States to his insurance company. [56 Stat. 769, 773-776; 50 U.S.C. Appendix, §§ 541-548] The amendment was called a

"clarification". S. Rept. No. 716, 77th Cong., 1st Sess., p. 3. However, the indebtedness provision in the Senate bill developed as follows: As the bill was first introduced it read:

> ". . . The amount paid by the United States to the insurer shall become a debt due to the United States by the insured. . . ."

Later a phrase was inserted between the words "insurer" and "shall" which read ". . . on account of applications made subsequent to approval of this Act." Finally this was changed to read: ". . . on account of applications approved under the provisions of this Article, as amended." See 50 U.S.C. Appendix §546. If veterans were liable for such payments under the 1940 Act, the additional language limiting the indebtedness provision to applications received after the effective date of the 1942 Act would have been pointless.

Congress may or may not have intended that the United States enjoy a common law recovery. However, we must construe statutes such as the Soldiers' and Sailors' Civil Relief Act of 1940 liberally to benefit servicemen and veterans. We must, under the theory of the Gilman case, not find common law liability in favor of the Government where it is not provided for in the statute, where it is not an "established type of liability", and where the legislative history is inconclusive as to whether Congress intended such a liability. And finally, we are unwilling to impose such a liability on veterans where the application forms to bring their policies under the protections of the 1940 Act limited the United States' right to reimbursement to

situations other than the one presented here. Because of these reasons we disagree with the decision of the Tenth Circuit in United States v. Hendler, 225 F.2d 106 (Cir. 10, 1955) which ignored the Supreme Court decisions above cited on their rule of liberal interpretation for the veteran.

The judgment is reversed and the District Court ordered to enter judgment for appellant.

(Endorsed:) Opinion. Filed Nov. 30, 1955.

PAUL P. O'BRIEN,
*Clerk.*

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## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14499

PAUL E. PLESHA, APPELLANT,

*vs.*

UNITED STATES OF AMERICA, APPELLEE

### JUDGMENT

Appeal from the United States District Court for the Northern District of California, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court. that the Judgment of the said District Court in this cause be, and

hereby is reversed, and that the said District Court be, and hereby is ordered to enter judgment for Appellant.

(Endorsed) Judgment.

Filed and Entered: November 30, 1955, Paul P. O'Brien, Clerk.

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## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14,499

JAMES E. MABBUTT AND MYRON L. KERN, APPELLANTS,

*vs.*

UNITED STATES OF AMERICA, APPELLEE

Before: DENMAN, Chief Judge and ORR and POPE, Circuit Judges

Per Curiam:

For the reasons stated in our opinion in Paul E. Plesha v. United States of America, No. 14,499, filed November 30, 1955 the judgments for Mabbutt and Kern are reversed.

(S.) WILLIAM DENMAN,
*Chief Judge,*

(S.) ——— ———,
*Circuit Judge,*

(S.) WALTER L. POPE,
*Circuit Judge.*

(Endorsed) Filed: January 5, 1956, Paul P. O'Brien, Clerk.

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14,499

JAMES E. MABBUTT AND MYRON L. KERN, APPELLANTS,

*vs.*

UNITED STATES OF AMERICA, APPELLEE

## JUDGMENT

Appeal from the United States District Court for the Northern District of California, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is reversed, and that the said District Court be, and hereby is ordered to enter judgments for Appellants.

(Endorsed) Judgment.

Filed and Entered: January 5, 1956, Paul P. O'Brien, Clerk.

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## APPENDIX B

The Soldiers' and Sailors' Civil Relief Act of 1940 provides in pertinent part as follows (54 Stat. 1178, 1179, 1183-1186, 1190-1191; 50 U. S. C. App. (1940 ed.) 510, 540-554):

## ARTICLE I

### GENERAL PROVISIONS

SEC. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

* * * * *

## ARTICLE IV

### INSURANCE

SEC. 400. In this article the term "policy" shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association; the term "premium" shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited shall refer to the date of admission to member-

ship in such association; the term "insured" shall include any person who is the holder of a policy as defined in this article; the term "insurer" shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined in this article.

SEC. 401. (1) The benefits of this article shall apply to any person in military service who is the holder of a policy of life insurance, when such holder shall apply for such benefits on a form prepared in accordance with regulations which shall be prescribed by the Administrator of Veterans' Affairs. Such form shall set forth particularly that the application therein made is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article and by receiving and filing the same the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy on which the application is made is within the provisions of this article. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration.

(2) The Veterans' Administration shall issue through suitable military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article and shall furnish forms to be distributed to those desiring to make application for its benefits.

SEC. 402. The benefits of this Act shall be

available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of $5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and a premium was paid thereon before the date of aproval of this Act or not less than thirty days before entry into the military service; but in no event shall the provisions of this article apply to any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than 50 per centum of the cash surrender value of the policy.

SEC. 403. The Veterans' Administration shall, subject to regulations, which shall be prescribed by the Administrator of Veterans' Affairs, compile and maintain a list of such persons in military service as have made application for the benefits of this article, and shall (1) reject any application for such benefits made by persons who are not persons in military service; (2) reject any applications for such benefits in excess of the amount permitted by section 402; and (3) reject any applications in respect of contracts of insurance otherwise not entitled to the benefits of this article. Said Administration shall immediately notify the insurer and the insured in writing of every re-

[illegible] or approval

SEC. 404. When one or more applications are made under this article by any one person in military service in respect of insurance exceeding a total face value of $5,000, whether on one or more policies or in one or more companies, and the insured shall not in his application indicate an order of preference, the Veterans' Administration shall reject such policies as have the inferior cash surrender value, so as to reduce the total benefits conferred within the face value of $5,000, and where necessary for this purpose shall direct the insurer to divide any policy into two separate policies. The said Administration shall immediately notify the insurer and the insured in writing of such selection.

SEC. 405. No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service, of the insured, and which has been brought within the benefits of this article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period; *Provided*, That in no case shall this prohibition extend for more than one year after the date when this Act ceases to be in force.

SEC. 406. Within the first fifteen days of each calendar month after the date of approval of this Act until the expiration of one year after the date when this Act ceases to be in force every insurance corporation or association to which application has been made as herein provided for the benefits of this article, shall

render to the Veterans' Administration a report, duly verified, setting forth the following facts:

First. The names of the persons who have applied for such benefits, and the face value of the policies in respect of which such benefits have been applied for by such persons, during the preceding calendar month.

Second. A list as far as practicable of the premiums in respect of policies entitled to the benefits of this article which remain unpaid on the last day of the preceding calendar month, which day is at least thirty-one days after the due date of the premiums, provided such premiums have not previously been so reported as in default.

Third. A list of premiums which, having been previously reported as in default, have been paid by the policyholder or someone on his behalf in whole or in part during the preceding calendar month.

Fourth. A computation of the difference between the total amount of defaulted premiums therein reported and the total amount of premiums paid as therein reported, after having been previously reported as in default. From this sum shall be deducted the total sum of any premiums previously reported as in default upon policies in respect of which the Veterans' Administration has, since the date of such report, rejected an application for the benefits of this article. The final sum so arrived at shall be denominated the monthly difference.

SEC. 407. The Administrator of Veterans'

Affairs shall verify the computation of monthly difference reported by each insurer and shall, within ten days thereafter, deliver each month to the proper officer of such insurer, a certificate in the amount of the monthly difference certified in respect of each insurer. Such certificate shall be signed by said Administrator in the name of the United States, shall be in such form as the Administrator shall determine, shall be payable to the insurer within sixty days after the approval of the statement of account, as provided in section 411 hereof, and shall bear interest at a rate to be prescribed by the Secretary of the Treasury, payable with the principal. Such certificate shall not be transferred except with the approval of said Administrator and shall remain with the insurer until settlement is made in accordance with this article.

SEC. 408. The certificate so delivered shall be held by the respectve insurers as security for the payment of the defaulted premiums with interest. To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien. Before any dividend is paid, or any loan or settlement is made the written consent of the Veterans' Administration must be obtained.

SEC. 409. In the event that the military serv-

ice of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid.

SEC. 410. If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: *Provided*, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force.

SEC. 411. At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410, but not in any case a greater amount on any

policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans.

SEC. 412. The balance in favor of the insurer in each case shall be certified by the Administrator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article.

SEC. 413. This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium.

SEC. 414. This article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service.

* * * * *

## ARTICLE VI

### ADMINISTRATIVE REMEDIES

* * * * *

SEC. 604. This Act shall remain in force until May 15, 1945: *Provided*, That should the United States be then engaged in a war, this Act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter * * *.

---

The Soldiers' and Sailors' Civil Relief Act of 1940 as amended in 1942 provides in pertinent part as follows (56 Stat. 769, 773-776; 50 U.S.C. App. 541-548):

## ARTICLE IV

### INSURANCE

* * * * *

SEC. 401. The benefits and privileges of this article shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article, unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the

provisions of this article, and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total amount of insurance on the life of one insured under policies protected by the provisions of this article shall not exceed $10,000. If an insured makes application for protection of policies on his life totaling insurance in excess of $10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article may be extended to include policies for a total amount of insurance not to exceed $10,000, and a policy which affords the best security to the Government shall be given preference.

SEC. 402. Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article, shall be sufficient as an application for the benefits of this article, but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this ar-

ticle and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article full force and effect with respect to such policy.

SEC. 403. The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest.

SEC. 404. No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is protected by the provisions of this article except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article except upon approval by the Veterans' Administration. The insured's

right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article.

SEC. 405. In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article, the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act was issued. The amount deducted by reason of the protection afforded by this article shall be reported by the insurer to the Administrator of Veterans' Affairs.

SEC. 406. Payment of premiums and interest thereon at the rate specified in section 405 hereof becoming due on a policy while protected under the provisions of this article is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article, the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate

and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

SEC. 407. The Administrator of Veterans' Affairs is hereby authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article shall be final, and shall not be subject to review by any other official or agency of the Government. The Administrator of Veterans' Affairs shall report annually to the Congress on the administration of this article.

SEC. 408. (1) The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the

Soldiers' and Sailors' Civil Relief Act amendments of 1942 and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the approval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942, of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions.

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No. 39

# In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PETITIONER

*v.*

PAUL E. PLESHA, JAMES E. MABBUTT AND MYRON L. KERN

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

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# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 39

UNITED STATES OF AMERICA, PETITIONER

*v.*

PAUL E. PLESHA, JAMES E. MABBUTT AND MYRON L. KERN

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

### OPINIONS BELOW

The opinion of the District Court (R. 110–123) is reported at 123 F. Supp. 593. The opinion of the Court of Appeals (R. 325–331) is reported at 227 F. 2d 624. A supplemental *per curiam* opinion of the Court of Appeals (R. 332) is not officially reported.

### JURISDICTION

The judgment of the Court of Appeals as to respondent Plesha was entered on November 30, 1955 (R. 331); its judgment as to respondents Mabbutt and Kern was entered on January 5, 1956 (R. 332). The petition for a writ of certiorari was filed on February 28, 1956, and was granted on April 9, 1956 (R. 333).

The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

## QUESTION PRESENTED

Whether, under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, former servicemen are obligated personally to reimburse the United States for its payment of defaulted premiums on their commercial life insurance policies after they requested that, pursuant to the Act, their policies be protected against lapse during their time of military service and for a prescribed period thereafter.

## STATUTES INVOLVED

The pertinent parts of the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, 50 U. S. C. App. (1940 ed.) 510 *et seq.*, and of its 1942 Amendment, 56 Stat. 769, 50 U. S. C. App. 541–548, are set forth in Appendices A and B, respectively, *infra*, pp. 77–83 and 84–88. 38 U. S. C. 454a is set forth in Appendix C, *infra*, pp. 89–90.

## STATEMENT

Respondents brought this action against the United States to recover sums which it had withheld from a special dividend declared on their National Service Life Insurance policies (government insurance for servicemen). The United States had withheld these sums as a set-off to reimburse itself for payments it had made on respondents' behalf to protect their private life insurance policies (non-government insurance) against lapse for failure to pay premiums while they served in the armed forces and for a period

thereafter. Respondents had applied for this protection under the Soldiers' and Sailors' Civil Relief Act of 1940. At trial and in the court below, respondents' principal contention was that the Government's payment of their defaulted premiums constituted a gratuity and did not create a debt. The Government, on the other hand, contended that under the Act (and at the insureds' request) it had merely guaranteed the payment of premiums, and that, like any other guarantor, it is entitled to reimbursement from the debtor after it has paid his debt pursuant to the guaranty. The Court of Appeals decided in favor of the respondents.

### A. THE FACTS

1. *Respondent Plesha.*—During the summer and fall of 1940, Plesha was a member of the National Guard. He expected his unit to be called into active service in the very near future (R. 181–182). In December of that year he obtained a $2,500 policy on his life from the California-Western States Life Insurance Company (R. 126). The annual premium on the policy was $57.63, payable $14.98 quarterly (R. 275, 295). Plesha paid only his first quarterly premium (R. 292–293, 295). He was inducted into active military service on March 3, 1941, three days before his next quarterly premium was due (*ibid.*; 126). He immediately filed applications with his insurance company and the Veterans' Administration to bring his private life insurance policy under the protection of the Soldiers' and Sailors' Civil Relief Act of 1940. The insurance company submitted appropriate forms,

which were approved by the Veterans' Administration, and the benefits and protection afforded by the Act were extended to his policy, effective March 6, 1941 (R. 126).

Thereafter, Plesha failed to pay premiums on this private life insurance policy (R. 127), but because he had brought the policy under the protection of the Act it did not lapse. § 405, *infra*, p. 80. Plesha was separated from the service on October 20, 1945 (R. 126). He did not notify the Veterans' Administration of his separation, but when that agency learned of it, in November 1946, it sent him VA Form letter FL 9-63 reminding him that defaulted premiums on his protected policy are charged as a loan against the policy and that the indebtedness carries interest at the policy loan rate. The letter advised him (a) that he could either withdraw his policy from the protection of the Soldiers' and Sailors' Civil Relief Act or continue such protection for a maximum period of two years from the date of his discharge,[1] (b) that any premiums accrued but not paid by him during the period of protection would, upon an accounting, be an indebtedness which he would owe the insurance company, subject to any credit allowed by

[1] The Civil Relief Act of 1940 provided protection during the period of the insured's military service and for one year thereafter (§ 405, *infra*, p. 80). However, under the 1942 Amendment the period of protection was enlarged to two years following the insured's separation from service (§ 403, as amended, *infra*, p. 85). We are informed by the Veterans' Administration that insureds who had obtained protection under the original Act were notified and given the benefit of this extended protection unless they expressed a contrary desire. See R. 287-289.

the company for the then cash value of the policy, and (c) that the Government guaranteed the payment of this amount to the insurance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account" (R. 126–127, 287–289). Hearing nothing from Plesha, the Veterans' Administration terminated the protection of his private policy on October 20, 1947, two years after his military service ended (R. 127).

Plesha's insurer, California-Western States Life Insurance Co., then reported to the Veterans' Administration that during the period that Plesha's policy had been protected against default his unpaid premiums plus interest at the policy loan rate (6% compounded annually) aggregated $343.93; and that after crediting the cash surrender value of $82.88[2] there remained a balance of $261.05 subject to payment by Plesha or the Government. On January 2, 1948, the Government sent the insurer a check in that amount (R. 127).[3]

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[2] The cash surrender value of the policy was built up during the period of protection even though the insured defaulted in payment of his premiums. Plesha's total premium payment during the more than six years his policy was in force was $14.98, one fourth of an annual premium (*supra*, p. 3); he received credit for a cash surrender value of $82.88, more than five times the amount he had actually expended.

[3] Pursuant to the choice given by § 408 (2) of the 1942 Amendment of the Civil Relief Act (*infra*, pp. 87–88), Plesha's insurer had elected to settle its accounts with the Government under the simple method provided in the 1942 Amendment (R. 135).

During the following month, Plesha was informed of this payment to his insurer and was notified that this amount represented a debt due by him to the Government (R. 127). Acknowledging the indebtedness, Plesha wrote the Veterans' Administration that he was not then in a position to make payment in full, and, in reply, he was informed that he could discharge the obligation by paying small amounts each month. Thereafter, Plesha forwarded three checks totaling $40 which were credited to his account by the Veterans' Administration. There remained an unpaid balance of $221.05. (R. 127–128.)

Meanwhile, in May 1942 while he was in the service, Plesha was issued a government life insurance policy, under the National Service Life Insurance Act, in the amount of $10,000. He paid the premiums on this government policy and kept it in force until November 1945. (R. 3–4.) In 1950 the Veterans' Administration determined that his NSLI policy was entitled to participate in a special dividend to the extent of $233.75, but it set off the sum of $221.05 because of his indebtedness to the United States in that amount for the payment it had made to protect his private insurance policy under the Civil Relief Act (R. 128). It paid the $12.70 difference, informing him that his indebtedness was thereby liquidated (R. 129). Thereupon, Plesha instituted this suit for the amount withheld (R. 3).

2. *Respondents Mabbutt and Kern.*—Prior to their entry into the service, Mabbutt and Kern had also been issued policies by the California-Western States Life Insurance Company, Plesha's insurer. Like

Plesha, both brought their policies under the protection of the Civil Relief Act of 1940 and later defaulted in the premium payments. Pursuant to its guaranty, the United States subsequently paid the net amounts due on their accounts to their insurer, and then requested each insured to make reimbursement, which they failed to do. And like Plesha, both Mabbutt and Kern had been issued $10,000 National Service Life Insurance policies which, in 1950, were entitled to participate in a special dividend. The United States withheld $205.75 from Mabbutt's dividend, and $302.06 from Kern's dividend, as an off-set and in liquidation of the amounts (in excess of the respective cash surrender values of their commercial policies) owed by them to the United States for its payment on their behalf to protect such policies from lapse. (R. 129–135). Their complaints in intervention likewise seek the amounts thus withheld (R. 28, 31).

### B. THE DECISIONS BELOW

Following a trial without a jury, the district judge made specific findings of fact (R. 125–138), as summarized above,[4] and filed an opinion sustaining the Government's right to reimbursement (R. 110–123;

[4] The trial court made a number of findings beyond the facts stated in the text. Thus, there were findings concerning the administration of the 1940 Act and statements about the Act made by VA officials (R. 136). The court also found that, when respondents' insurer elected to settle its accounts with the United States under the method provided in the 1942 Amendment, respondents were not consulted (R. 137). Additionally, the court found that respondents' private policies, as originally issued, contained provisions permitting the insureds to borrow from the

123 F. Supp. 593). He held that at the respondents' request the United States had guaranteed the payment of their defaulted premiums; that as a guarantor the United States would be entitled to reimbursement under common law principles; and that neither the provisions of the 1940 Act nor its legislative history are indicative of a Congressional purpose to abrogate this common law right of the United States to reimbursement (R. 116–117). He held further that 38 U. S. C. 454a (which prohibits the United States from off-setting debts against veterans' benefits except in cases of overpayment) was no barrier to the set-off here because the payment of premiums constituted an "overpayment" within the meaning of that section (R. 119–123).

The Court of Appeals for the Ninth Circuit reversed (R. 325–333; 227 F. 2d 624). Stating that statutes must be liberally construed in favor of veterans, the court pointed to the absence of any provision

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insurer on the sole security of their policies by applying for a policy loan; that, under these provisions, interest at 6% compounded annually would be added to the amount of the policy loan; that when the amount of the loan, thus increased, exceeded the policy loan values the policy would be cancelled, but the policies did not impose on the insureds a personal liability to repay such policy loans (R. 135–136). (Respondents, however, did not apply for a policy loan.) The court also found that a substantial number of other persons owning policies issued by the same insurer brought their policies under the protection of the 1940 Act. Of these, 8 were terminated by death while the policies were under protection, and 38 policy holders either paid the insurer in cash the amount of their unpaid premiums plus interest at the policy loan rate, or fully paid such premiums and interest by applying the cash value of their policies thereto (R. 137).

in the Act or regulations expressly spelling out a right of reimbursement, asserted that it would be difficult to determine the exact amount the United States might have expended on behalf of any particular policy if the insurer had settled with the Government under the procedures set up by the 1940 Act rather than under its 1942 Amendment, and suggested that if the United States recovered the premiums plus interest at the policy loan rate it might make a "profit" because of the difference between the interest rate it paid the insurer and the interest rate it was seeking to recover from the insured.

The court viewed the legislative history of the 1940 Act as inconclusive and construed the 1942 Amendment (which specifically states that amounts paid by the United States shall be a debt due to the United States by the insured) to be a modification, rather than a clarification, of that Act despite its being described as a "clarification" by the Congressional committees.[5] The court concluded that, "Congress may or may not have intended that the United States enjoy a common law recovery," but held that under the theory of *United States* v. *Gilman*, 347 U. S. 507,[6] it must "not find common law liability in favor of the Government where it is not provided for in the statute, where it is not an 'established type of liability', and where the legislative history is inconclusive as to whether Con-

[5] See *infra*, pp. 64–68.

[6] In the *Gilman* case, this Court held that the United States, after having been held to be liable for damages in a Tort Claims Act suit, could not maintain a suit against its negligent employee to recover indemnity.

gress intended such a liability" (R. 331). The court recognized that its decision was in direct conflict with that of the Tenth Circuit, rendered four months earlier, in *United States* v. *Hendler*, 225 F. 2d 106.

## SUMMARY OF ARGUMENT

The court below held that respondents are under no obligation to reimburse the United States for its payment, on their behalf and at their request, of the premiums on their private life insurance policies. This holding construes the Soldiers' and Sailors' Civil Relief Act of 1940 as furnishing a particular group of servicemen with free commercial life insurance, at Government expense, during their period of military service and for some time afterward. It imputes to Congress an intention to have the United States gratuitously assume the indebtedness of servicemen on insurance contracts entered into before they joined the armed forces. This reading of the insurance Article of the 1940 Act is out of harmony with the general purpose of the statute; it is not necessary in order to effectuate the underlying policy; it is at variance with the Act's other provisions for civil relief; and it is inconsistent both with the scheme of the insurance Article and with its specific provisions. Moreover, it results in serious inequities.

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[7] Both courts below rejected a Government defense, based principally on 38 U. S. C. 11a-2, 445, and 817, that the district court has no jurisdiction over a suit seeking recovery of a National Service Life Insurance dividend. We have not raised that point in this Court.

I

A. The Act was aimed at protecting servicemen from prejudice and harassment in connection with their civilian affairs during their period in uniform. The entire thrust of the statute is to provide this protection through the device of a temporary deferment of previously incurred obligations, and not through a discharge or a gratuitous assumption by the United States of servicemen's debts. The Act itself, in its opening Article, states its purpose to be to provide for the "temporary suspension" of servicemen's obligations. The insurance provisions must be read in context with this stated purpose as well as with the Act's other provisions for civil relief all of which contemplate a deferment, not a discharge or wiping out, of the servicemen's debts.

B. The particular structure and terms of the Act's insurance provisions show that they do not confer a gratuity but that the United States may obtain reimbursement.

1. In the insurance Article Congress recognized that the primary debt was from the insured to his insurer for premiums accruing during the insured's military service and one year thereafter, and that the position of the United States was merely that of guarantor. The primary nature of the insured's obligation, woven into the entire Article, is aptly demonstrated by the provisions directing deduction of the unpaid premiums (with interest) from the proceeds of the policy on his death or from the cash surrender value if the policy does not mature by death, as well as by the re-

quirement that the ex-serviceman pay that amount to his insurer to keep the policy in force after the period of protection ends. Moreover, Congress was careful to require an application by the serviceman, concurred in by the insurance company.

2. Having requested and received insurance coverage from his insurer, the insured was obliged to pay the defaulted premiums. The United States, as a guarantor, paid the debt on his behalf and is entitled, under common law principles, to be reimbursed. The transaction was described repeatedly by the Congress, in debates and reports, as a guaranty. When Congress utilizes a legal transaction familiar to the law, it must be assumed to have meant to give that transaction the incidents and consequences which normally result from such a transaction; where the transaction is a guaranty, the guarantor is entitled to reimbursement even in the absence of an express agreement by the principal debtor.

3. The specific remedies given by the Act to the United States (lien, credit for cash surrender value, etc.) are summary in nature and manifestly were intended to safeguard and supplement, rather than to replace, the normal remedy of reimbursement. Nowhere does the Act indicate that they are to be the exclusive remedies and to hold them so would be unfair both to servicemen with protected policies and those who had none. Thus, some protected servicemen, who, like respondents, survive the war, obtain private insurance almost scot free, while other protected servicemen who die in service or whose policies have a cash surrender value sufficient to pay the defaulted

premiums cannot obtain this gratuity. Such a discrimination would not have a reasonable basis. It is highly unlikely, moreover, that Congress intended to provide free commercial insurance at high premium rates to some servicemen and at the same time to require the payment of premiums, as it did, on Government insurance (National Service Life Insurance).

4. It would be neither unjust nor impracticable to allow suit for reimbursement. Though the court below suggests that it would be impossible to determine the amount any particular insured owes the Government, the actual fact is that such a determination is perfectly feasible and is now being made. Nor is it at all certain that the Government will make a "profit"—because of a difference in interest rates—as the court also suggests; in any event, Congress may have deemed such a "profit" would be compensation for the costs and risks of undertaking this large-scale guaranty. In addition, the argument that it is impossible to determine the amount of the Government's claim is self-defeating, for, by the very same reasoning, it would be impossible to determine the amount which the statutory lien secures.

C. The *Gilman* decision, 347 U. S. 507, on which the court below relied heavily, is an exception to the historic rule that no specific statutory authority is needed for the United States to enforce established rights which others, similarly situated, would have. The unique considerations—revolving around the relationship of the Government and its employees—which led to the exception made in *Gilman* are not present here. In any event, Congress has indicated a policy

and a "position" requiring the insured to reimburse the United States—and against free insurance. It is, therefore, fully consonant with the policy of Congress to allow the Government's claim without express statutory authority.

II

A. That the 1940 Act creates a transaction of guaranty involving a primary indebtedness of the insured, with his consequent obligation to reimburse, is confirmed by the Act's legislative history. The 1940 Act was virtually a reenactment of the Civil Relief Act of 1918. The history of that earlier Act shows that the insurance provisions were written specifically to meet the objections of the insurance industry to a proposed bill which failed to provide for an enforcible obligation of the insured but which, instead, gave him an option to pay or not pay his premiums, as he chose (which is precisely the result of the decision below). As revised and passed, the bill provided for a consensual arrangement so as to create a primary indebtedness on the part of the insured and a guaranty of that indebtedness by the United States.

In construing the 1918 Act, the Veterans Bureau applied elementary principles of the law of guaranty, *viz.*, that the principal debtor (the insured serviceman) must reimburse the guarantor (the Government) for its payment of his debt (premiums) to the creditor (the insurance company). The Bureau sought and obtained reimbursement from servicemen who had applied for and received the protection of

the 1918 Act, and it advised Congress of this administrative construction.

B. In 1940, Congress reenacted the 1918 Act without material change and without any indication of disapproval of this construction—indeed, the only time the question of reimbursement arose while reenactment was being considered, the House was told that the law would require the insured to make repayment. Any ambiguous or mistaken informal representations later made by officials on this question cannot bind or estop the Government.

C. In 1942, Congress amended the 1940 Act by providing expressly that these payments by the United States "shall become a debt due to the United States" and shall be collectible from the insured. This amendment, which wrote into the statute the recognized common law principle applicable to all guaranties, did not change the 1940 Act but merely made explicit what theretofore had been implicit. The 1942 Amendment (which covered several subjects) was described, generally, in Congress as a clarification and liberalization of the 1940 Act, terms which would be inapposite if respondents' views were correct that what had been a gratuity would thereafter be a debt.

## III

The United States has the same right of set-off which every creditor has. While 38 U. S. C. 454a exempts veterans' benefits from set-off, it does permit the set-off of "overpayments" made under veterans laws. Under the consistent administrative practice

and construction, a payment of a veteran's debt on his behalf, under a law relating to veterans, constitutes such an "overpayment." Accordingly, the United States had the right to set-off respondents' indebtedness against their National Service Life Insurance dividends.

## ARGUMENT

### I. THE PATTERN AND TERMS OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 SHOW THAT THE INSURED IS OBLIGATED TO REIMBURSE THE UNITED STATES FOR ITS PAYMENT OF DEFAULTED PREMIUMS ON HIS BEHALF

Under Article IV of the 1940 Act, the United States, at the insured's request, guaranteed the payment of his premiums on his commercial life insurance policy, so that his policy would not be forfeited if he failed to pay them during his period in service. The decision below holds that, because the Act has no express provision requiring the insured to reimburse the United States after it pays his premiums pursuant to the guaranty, the Government is precluded from asserting the normal common law remedy which every guarantor has. The result is that, although the insured has had private insurance coverage through the years, he does not have to pay for it unless he chooses to do so. This result, which is based upon implication rather than the statutory terms, is not in harmony with either the general purpose or the specific objectives of the Act. On the contrary, it is inconsistent with the Act's policy, purpose, and terms, all of which merely look toward a temporary postponement of the serviceman's obligations—a moratorium and not a discharge of his debts.

A. THE GENERAL PURPOSE OF THE ACT, AND ALL ITS OTHER PROVISIONS FOR CIVIL RELIEF, LOOK TOWARD A DEFERMENT AND NOT A DISCHARGE OF THE SERVICEMAN'S CIVIL LIABILITIES

In construing a statute, guidance should be sought not merely from a few of its words or sections, but from "the provisions of the whole law, and [from] its object and policy." *Mastro Plastics Corp.* v. *Labor Board,* 350 U. S. 270, 285; *United States* v. *Boisdore's Heirs,* 8 How. 113, 122; *United States* v. *Amer. Trucking Ass'ns,* 310 U. S. 534, 542–543. The opinion below pays little heed to the provisions of the Act as a whole and makes no mention whatever of the dominant purpose of the Act which is specifically set forth in its opening sentences (§ 100, *infra,* p. 77).[8] That purpose is stated to be to provide for "the *temporary suspension* of legal proceedings and transactions which may prejudice" the civil rights of persons in military service (emphasis added). As Judge Lemmon said of these words, in his opinion after trial (R. 110–111), "Coming as they do at the very threshold of the statute, these Congressional declarations tincture the entire enactment. Every article, every section, every paragraph, every sentence is tinged with this 'temporary suspension' hue—unless a contrary legislative intent is plainly shown. No such contrary intent has been even intimated in any of the sections pertinent to the present lawsuit."

As we point out elsewhere in detail (Appendices D and E, *infra,* pp. 91–108), the basic objective of the Act was to alleviate the hardship which servicemen

[8] We set forth in Appendix D, *infra,* pp. 91–98, a detailed analysis of the scheme of the insurance provisions of the 1940 Act and its 1942 Amendment.

might face in connection with their civilian affairs while they were in uniform away from home and business. In World War I, in similar circumstances, Congress had recognized that tens of thousands of men suddenly called into military service could be ruined "if creditors are allowed unrestrictedly to push claims" on obligations which were incurred before the men were called into the service, and that "freedom from harassing debts will make them better and more effective, more eager soldiers".[9] To accomplish this end, Congress was unwilling to impose an arbitrary and rigid prohibition of all actions against a soldier such as had been provided by the stay laws of the Civil War, for the lesson of those laws had shown that this would be "as much a mistaken kindness to the soldier as it is unnecessary. * * * There are many men now in the Army who can and should pay their obligations in full"; on the other hand, those who, because of their being in service, are unable to do so, "if given time and opportunity can, in most cases, meet their obligations dollar for dollar."[10]

In lieu of rigid prohibitions, the design of the legislation was to reflect a "policy of moderation and flexibility";[11] relief was to be afforded simply by deferring the enforcement of the serviceman's obligations. The Act was to establish uniform and effec-

[9] H. Rept. No. 181, 65th Cong., 1st Sess., p. 3 (Oct. 2, 1917) (reporting on the bill which later became the Soldiers' and Sailors' Civil Relief Act of 1918 and which was substantially identical to the 1940 Act; see *Boone* v. *Lightner*, 319 U. S. 561, 565).

[10] H. Rept. No. 181, *supra*, at pp. 2–3.

[11] *Ibid.*, at p. 5.

tive machinery to that end. As Dean Wigmore, one of the draftsmen of the Civil Relief Act of 1918, said of the bill originally introduced in Congress, "We stopped at suspending the remedy. * * * The whole theory is simply to hold the [creditor's] hand. Throughout the bill, so far as I am able to see it, there is nothing more done than suspension of remedy." [12]

The introductory Article, as enacted, incorporates precisely that view. It specifies that "provision is hereby made to *suspend* enforcement of civil liabilities" and that "the following provisions are made for the *temporary suspension*" of the serviceman's civil obligations (§ 100, *infra*, p. 77; emphasis added). This purpose of providing a temporary suspension of the enforcement of obligations, which the court below completely ignored, is reflected in every subject covered by the Act.

For example, although the Act suspends the eviction of a serviceman's dependents from their dwelling (except upon leave of court), the Act does not relieve him from paying rent which accrues while the eviction is stayed (§ 300, 50 U. S. C. App. (1940 ed.) 530). Similarly, although the Act bars the termination of a serviceman's installment contract for nonpayment of an installment (again, except upon leave of court), it

[12] *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d sess., on S. 2859 and H. R. 6361*, p. 87. Although the insurance provisions of the original bill were later modified so as to incorporate a guaranty by the Government that the defaulted premiums would be paid, the theory underlying the Act and the purpose of the insurance provisions were not changed. See *infra*, pp. 99–108.

does not cancel the serviceman's indebtedness nor does it stop the accrual of further indebtedness through failure to pay installments becoming due during the period the remedies are suspended (§ 301; 50 U. S. C. App. (1940 ed) 531). The same is true as to indebtedness accruing on mortgages, conditional sales contracts, taxes, etc. (§§ 302, 303, 500; 50 U. S. C. App. (1940 ed.) 532, 533, 560).

The insurance provisions must be read in this context. They follow the introductory Article and must, of course, take their meaning from it, for the opening words create the frame within which all of the Act's clauses must be viewed. The other specific statutory provisions, with their entire emphasis on suspension rather than cancellation, also have both an indirect and a direct bearing. Insofar as the insured is firmly obligated to pay premiums to his insurer after he requests the insurer to continue to give him coverage during his period in service (see *infra*, pp. 21–22), the recurring obligation to pay premiums is essentially the same as his recurring duty to make payments under leases, installment contracts, mortgages, and the tax laws. In the absence of express language in the Act's insurance provisions directing a different view—and the nature of insurance obligations furnishes no persuasive reason for differentiation—there is no justification for treating the serviceman's recurring premium obligation differently from his other recurring demands. To do so produces an unwarranted departure from the overall policy and the stated purpose of the Act. Cf. *Keifer and Keifer* v. *RFC*, 306 U. S. 381, 394.

B. THE BASIC STRUCTURE AND TERMS OF THE INSURANCE PROVISIONS SHOW THAT THEY DO NOT CONFER A GRATUITY BUT THAT THE UNITED STATES MAY OBTAIN REIMBURSEMENT

The provisions of Article IV and its legislative history (which we discuss separately below, p. 51 *et seq.*) demonstrate, *first,* that one purpose of the Article was to create a primary and legally enforcible debt due and owing by the insured to his insurer for premiums falling due during the period his policy was to be protected by the Act; *second,* that the transaction envisaged by the Article was one of guaranty, i. e. that the United States undertook to pay the insured's debt if he failed to do so within the period specified; and, *third,* that Congress did not intend to confer a gratuity upon the insured to the extent of any payments made by the United States pursuant to the guaranty, but on the contrary contemplated that the insured would reimburse the United States, and to that end even wrote into the Act security devices, beyond the normal common law remedies, such as the lien provision of § 408, to assist in obtaining prompt reimbursement. These summary remedies were not meant to replace, but to supplement, the common law remedies the availability of which need not be, and rarely is, explicitly spelled out in a statute.

1. *The insured is primarily indebted for the defaulted premiums.*—When an insured expressly requests an insurer to afford coverage during a specified period and the insurer gives that coverage, whether on the basis of the insured's personal credit or the added inducement of a guaranty by a third party, the insured is obligated to pay the insurer for the coverage so extended. The short of it is that he has

purchased insurance and he must pay for it. Cf. *Commercial Mutual Marine Ins. Co.* v. *Union Mutual Ins. Co.*, 19 How. 318, 323; *Tarleton* v. *DeVeuve*, 113 F. 2d 290, 295–296 (C. A. 9); certiorari denied, 312 U. S. 691. The insurance Article of the 1940 Act was specifically designed to reflect a transaction of that nature, one which would create a legally enforcible and primary obligation owing from the insured for premiums becoming due during his military service.[13] It was designed, moreover, to make the Government's role in the transaction to be that of a guarantor of the insured's obligation. See *infra*, p.

[13] As we show below in our discussion of the legislative history (pp. 99–108), it was the absence of such an enforcible obligation in the bill originally introduced in Congress during World War I which evoked the vigorous opposition of the insurance industry. Under the terms of the original bill, the insured made no request to his insurer to continue to give him coverage even if he did not pay the premiums on time, and without such a request there was no basis for any contractual obligation or personal liability for the premiums. That bill required the insurer to extend coverage but in effect gave the insured an option to pay or not to pay his premiums, as he saw fit, after his separation from the service (which, incidentally, is exactly the result of the decision below). See *Hearings and Memoranda on S. 2859 and H. R. 6361*, 65th Cong., 1st and 2d Sess., pp. 192 *et seq.*; see also *United States* v. *Hendler*, 225 F. 2d 106, 110 (C. A. 10). To avoid this result the bill was revised and the optional nature of the obligation was removed. As passed in 1918 and reenacted in 1940, the Act contemplated—indeed, provided for—a binding primary obligation on the part of the insured to pay the premiums to the insurer, for it extended protection only when the insured expressly requested his insurer (through an application submitted *to the insurer*) to continue insurance coverage despite current default of premiums (the ultimate payment of which the Government guaranteed), and the insurer (by forwarding the application to the Government) agreed to do so. § 401 (1), *infra*, p. 78.

25 *et seq.*; p. 102 *et seq.* It is important to bear in mind at this stage of the argument that the concept of guaranty implies the existence of a primary obligation, for, by definition, a guaranty is a promise by one party to pay the debt of another if the other fails to pay (see fn. 14, *infra*, p. 26).

Sections 408 through 411 (*infra*, pp. 81–82) clearly indicate that it is the insured who is primarily liable for the debt created by the unpaid premiums, and each of these sections is flatly irreconcilable with the view that Congress intended to give servicemen "a free ride in their private insurance" (R. 110). Thus, § 410 envisages payment by the insured to the insurer: "If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon * * * the policy shall * * * lapse." The primary nature of the insured's obligation is also recognized in § 409 which provides that, in the event of the death of the insured while the protected policy is in force, "the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy" in payment to the insurer for such unpaid premiums. Unquestionably, this provision directing self-payment by the insurer, at maturity, implies an underlying debt of the insured. It should be noted that the same section directs that this deduction of the insured's indebtedness shall be credited to the United States in the insurer's next monthly report, thus removing this amount from any payment due from the United States. This, too, is wholly incon-

sistent with the view that the Insurance Article contemplates no liability by the insured and a gratuity by the United States. Since the United States would normally have issued certificates to the insurer for the defaulted premiums at the time of their default (§ 407; see *supra*, p. 81), this provision means that the insured, not the United States, pays, out of the proceeds of the policy, for the defaulted premiums.

The provisions relating to the disposition of the cash surrender value and to the Government's lien also militate against the view that the insurance protection was to be provided without obligation by the insured for the premiums. § 411 provides that if the insured fails to pay the defaulted premiums to his insurer, the cash surrender value (to the extent of the unpaid premiums with interest at the policy loan rate) shall be credited to the United States upon final accounting. This provision, depriving the insured of the cash surrender value of his policy, is consistent only with the objective of liquidating an indebtedness owed by him for the unpaid premiums, and obviously not with a purpose of providing free insurance.

Section 408, on the other hand, provides that to indemnify it against loss the United States shall have a lien on the policy. This clause also necessarily implies a debt of the insured which has existence independent of the lien, for a lien is simply a security device; title to the property which is subject to the lien is not thereby vested in the lienor; a lien is only an encumbrance or a charge upon property for the payment of a debt. *Tobin* v. *Insurance Agency Co.*,

80 F. 2d 241, 243 (C. A. 8); *United States* v. *1364.76875 Wine Gallons,* 60 F. Supp. 389, 392 (E. D. Mo.); 33 Am. Jur. 419. If a gratuity were intended and there were no obligation on the insured, there would be no occasion for a lien or for any provision to secure the United States *"against loss"*. Indeed, the very fact that the section specifies that the United States is to be safeguarded "against loss" contradicts the view that the United States is to pay the insured's defaulted premiums without recourse against him.

Moreover, such phrases as *"defaulted* premiums" (§ 408), *"unpaid* premiums" (§ 409), *"past due* premiums" (§ 410) all indicate an obligation to pay. This is underscored by the requirement that the premiums must be paid *with interest,* for the word "interest" imports an amount which one has *contracted* to pay for the use, directly or indirectly, of money; it normally does not apply to moneys which are payable or not wholly at one's will and without legal obligation (*Equitable Society* v. *Commissioner,* 321 U. S. 560, 564; *Deputy* v. *DuPont,* 308 U. S. 488, 498).

It is to be noted, finally, that nowhere in the Act is there any suggestion that this primary obligation of the insured is for anything less than the entire amount of the defaulted premiums plus interest at the policy loan rate. §§ 409, 410, and 411 refer specifically to the unpaid premiums "with interest at the rate provided for in the policy for policy loans".

2. *Having paid the defaulted premiums as a guarantor, the United States is entitled under the rules*

*applicable to guaranty to reimbursement from the principal debtor.*—As we have just pointed out, under Article IV of the Act the United States undertook to pay the insured's defaulted premiums only if he did not; the insured was primarily indebted; the Government's liability was a conditional or secondary one. In short, the statute created, and was intended to create, a transaction of guaranty.[14] *United States* v. *Hendler,* 225 F. 2d 106 (C. A. 10); *United States* v. *Nichols,* 105 F. Supp. 543 (N. D. Ia.), appeal dismissed, 202 F. 2d 958 (C. A. 8); *Morton* v. *United States,* 113 F. Supp. 496 (E. D. N. Y.): *Decisions of the Administrator of Veterans Affairs, No. 742,* Vol I, Supp. p. 93 (set out at R. 62–94). That was the substance of the relationship Congress established in

[14] A guaranty is a promise to pay if the one primarily liable for the debt does not. 24 Am. Jur. 873–874; 4 Williston on *Contracts* (Rev. Ed.), p. 3484. Being a collateral undertaking of another person, a guaranty imports the existence of two independent obligations: that of the principal debtor and that of the guarantor. 24 Am. Jur. 875–876. It differs from suretyship in that the surety is party to the original obligation, may be sued as a primary obligor jointly with the principal, and is unconditionally bound; in guaranty, the guarantor's liability is secondary and is conditioned upon default of the principal debtor and notice of such default. 24 Am. Jur. 879. Guaranty differs from indemnity in that the indemnitor's liability is primary and, in the normal situation, there is no privity or obligation between the parties to the indemnity contract and the third person (principal debtor) who causes the loss; in guaranty, there must be an obligation or privity between the creditor and the principal debtor: See *Howell* v. *Commissioner,* 69 F. 2d 447, 448 (C. A. 8); *United States* v. *Nichols,* 105 F. Supp. 543, 556 (N. D. Ia.), appeal dismissed, 202 F. 2d 958 (C. A. 8); 24 Am. Jur. 882–883.

Article IV,[15] and although the word "guaranty" is not used in the Article,[16] we will see later (*infra*, p. 53 *et seq.*, p. 102 *et seq.*) that that was the term which was used repeatedly to describe and explain the transaction in the committee reports, in the legislative hearings, in the debates on the floor of the House and Senate, in the Regulations implementing the Act, in its administrative construction, and even in the title given to Article IV when it was first proposed as a separate bill.

The concept of "guaranty" has a definite and well known legal significance in our law. Congress is presumed to use established legal terms with their recognized meaning. *Case* v. *Los Angeles Lumber Co.*, 308 U. S. 106, 115; *McNally* v. *Hill*, 293 U. S. 131, 136. Similarly, when Congress utilizes a transaction familiar to the law, Congress normally means to ascribe to that transaction the same legal characteristics and the same consequences as normally flow from it. See,

[15] There can be no doubt that under the Civil Relief Act the basic requisites of the formation of a contract of guaranty were present. There was offer and acceptance (submission of applications to the VA and latter's approval); consideration (extension of insurance and deferment of lapsing the policy for failure to pay premiums currently); an independent promise of guaranty (the United States undertook to pay premiums if the insured did not); there was provision for the creditor-insurer to give notice of default by the principal debtor-insured (through the monthly reports and final accounting), etc.

[16] Just as the word "contract" is not needed to constitute a contract, it is well settled that the presence or absence of the label "guaranty" is not decisive in determining whether a particular transaction is one of guaranty; instead, the transaction must be viewed in the light of its incidents, the attendant circumstances, and the intentions of the parties. 24 Am. Jur. 876–877.

*e. g.*, guaranty—38 Ops. Atty. Gen. 75; 38 *id.* 319; insurance contract—*Ferguson* v. *Union National Bank*, 126 F. 2d 753, 759 (C. A. 4); *Fleetwood Acres* v. *FHA*, 171 F. 2d 440, 442 (C. A. 2); note—*United States* v. *Hansett*, 120 F. 2d 121, 122 (C. A. 2); mortgage—*HOLC* v. *Wilkes*, 130 Fla. 492, 178 So. 161.

It is, of course, an elementary rule of guaranty that where the guarantor, pursuant to his undertaking, has paid the indebtedness, the principal debtor is obligated to indemnify and reimburse the guarantor. The debtor's obligation to pay the debt is not extinguished by the guarantor's payment. Even in the absence of any express contract, he is impliedly bound to reimburse his guarantor. *Fidelity & Deposit Co.* v. *Hobbs*, 144 F. 2d 5, 8 (C. A. 10); *Joe Balestrieri & Co.* v. *Commissioner*, 177 F. 2d 867, 872 (C. A. 9); *Scott* v. *Norton Hardware Co.*, 54 F. 2d 1047, 1050 (C. A. 4); and see, *Howell* v. *Commissioner*, 69 F. 2d 447, 450 (C. A. 8), certiorari denied, 292 U. S. 654; 4 Williston on *Contracts* (Rev. Ed.), p. 3635; 24 Am. Jur. 956.

Not only may the claim of the guarantor be based upon this implied contract with the principal debtor (the insured) for reimbursement, but it may also rest upon subrogation to the creditor's (the insurance company's) rights against the insured (the principal debtor). *Alexander* v. *Young*, 65 F. 2d 752, 756–757 (C. A. 10); *Scott* v. *Norton Hardware Co.*, *supra*, 54 F. 2d at 1051; *Howell* v. *Commissioner*, *supra*, 69 F. 2d at 451; 24 Am. Jur. 955–956.[17] As

[17] Additionally, since the insured (through his application) specifically requested the United States to pay his premiums, recovery may be grounded on an implied agreement to repay the

stated by the Tenth Circuit in *United States* v. *Hendler, supra,* 225 F. 2d at 108,

> We think it is clear that the Government does not become primarily liable for the payment of premiums on insurance policies of servicemen who took advantage of the benefits of the Act. It is only a guarantor, guaranteeing payment thereof. It merely guarantees payment of such premiums as are not paid by policyholders who have come under the Act. It is well settled in the law that one who guarantees a debt of another and is required to pay the same is entitled to reimbursement from the principal debtor. This principle is so well settled that no citation of authority is necessary. Since the contract between the Government and the serviceman arising from the Act is one of guaranty, it must follow that the Government is entitled to reimbursement unless the Act itself compels a contrary conclusion.

The only terms of the Act which have been alluded to as suggesting a contrary conclusion are those which provide remedies to the United States of a type not normally available to a guarantor at common law. But those remedies were not meant to be exclusive of all others.

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premiums paid in his behalf. *Metropolitan R'd* v. *Dist. of Columbia,* 132 U. S. 1, 12–13; 4 Am. Jur. 507.

It is also pertinent to note that, in the absence of an agreement to the contrary, the duty to pay the premiums on a life insurance policy which has been assigned as collateral rests upon the insured rather than the assignee, and if the assignee pays them, he is entitled to be reimbursed for the amount paid. 29 Am. Jur. 357.

3. *The remedies given by the Act to the United States supplement, rather than replace, the ordinary remedy of reimbursement.*—Respondents argued below, and the court below appears to have agreed, that, assuming that a transaction of guaranty was intended, the Act confers its own remedies upon the United States which replace the established remedy of reimbursement. In that connection, they referred to §408 (*infra*, p. 81) which provides that, "To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article"; to § 409 (*infra*, p. 82) which declares that, in the event of the insured's death, the defaulted premiums with interest at the policy loan rate shall be deducted from the proceeds of the policy and credited to the United States in the monthly report; and to § 411 (*infra*, p. 82) which requires that, upon the final settlement between the insurer and the United States, the United States shall be given credit for the cash surrender value of the lapsed policy (to the extent of the unpaid premiums with interest at the policy loan rate).

This argument has been comprehensively examined and squarely rejected by the agency charged with the administration of the Act (*Decisions of the Administrator of Veterans' Affairs, No. 742*, Vol. I, Supp. p. 93 (set out at R. 62–94); *ibid.*, No. 513, Vol. I, p. 781 (set out at R. 56–62)) and by several of the lower courts as well (*United States* v. *Nichols*, 105 F. Supp. 543 (N. D. Ia.) appeal dismissed, 202 F. 2d 958 (C. A. 8); *United States* v. *Hendler*, 225 F. 2d 106 (C. A. 10); *Morton* v. *United States*, 113 F. Supp. 496

(E. D. N. Y.)). It should likewise be rejected here.

In the *first* place, as we have already pointed out (*supra*, pp. 23–25), each of these provisions is consistent only with a Congressional policy that the burden of the premiums should fall where in equity and good conscience, and under traditional legal principles, it belongs—upon the insured. These remedies, in themselves, "tend to indicate that there was no intent on the part of Congress to provide gratuitous insurance." *Nichols, supra,* 105 F. Supp. at 557. They are provisional or summary remedies designed to safeguard the reimbursement right of the United States. Their function is to assure the United States that funds owed by the insurer to the insured will not be paid or dissipated unless the claims of the United States against the insured are first satisfied. They provide "a remedy about which there might otherwise be some difficulty with respect to procedure or with respect to exemption statutes" (*ibid.*).[18]

*Second,* as we have also noted, the lien provision necessarily implies an indebtedness to the United States which exists independently of the lien, for a lien is only a security device—it is a charge upon property to secure payment of a debt. And the underlying debt which the lien secures must be for the entire amount of the insured's obligation to his insurance company, which the United States undertook to pay if the insured did not. The section (§ 408, *infra,*

[18] Submission of the application for protection by the insured and the insurer constituted their "consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article" (§ 401, *infra*, p. 78).

p. 81) speaks of indemnifying the United States "against loss," *without qualification*. There is nothing to suggest that the Government was to be indemnified merely *pro tanto* or only up to the extent of the cash surrender value. Rather, the governmental "loss" against which the lien is security must relate to the subject matter of the sentence which immediately precedes the lien provision in § 408, *viz.*, the certificates delivered by the United States to the insurer as security "for the payment of the defaulted premiums with interest." This phrase, "the defaulted premiums with interest," represents the entire amount the United States has under risk of loss. These two sentences of § 408—relating to certificates and lien—indicate that both the insurer and the United States are to be secured against loss, the insurer by certificates, the Government by a lien, but both for the *same* indebtedness, namely, the insured's unpaid-premiums-with-interest.

*Third,* to limit the reimbursement right of the United States solely to the statute's provisional remedies—lien on the proceeds of the policy, or credit for the cash surrender value, or credit for premiums and interest on death—would be inequitable from the viewpoint of both the United States and the servicemen. Instead of being uniform as to all servicemen and veterans, the reach of the remedy and of the insured's liability would vary from policy to policy. The widow, beneficiary, or estate of the serviceman who makes the ultimate sacrifice in line of duty would be liable—through the Government's lien on the proceeds of the policy—for full payment of all unpaid premiums. On

the other hand, those servicemen who survive, like respondents, would be liable only to the extent of the available cash surrender value on their policy, and of course that amount might be different in each case, some policies with perhaps no cash surrender value at all (*supra*, fn. 2, p. 5; *infra*, pp. 41–42). And whenever the cash surrender value would not be sufficient to meet the premium obligation, the United States would have no recourse for the deficiency. The point is forcefully stated by the Administrator of Veterans' Affairs (*Decision No. 742, supra*, at pp. 104–105; R. 86–87):

> To hold that the insured is not indebted to the Government in such circumstances would produce results so inequitable and falling so unevenly upon those protected under the 1940 Act that the intelligence and sense of fairness of Congress should not be impugned by ascribing to it such an intent unless no other conclusion can be drawn from the language of the Act itself. For example, it would be possible, in that event, for an insured, whose policy had no cash surrender value or only such as accrued at no cost to him, to allow his insurance to lapse upon termination of the Act's protection, thereupon pay nothing at all, and yet be free of all obligations. On the other hand, the Act specifically requires another, who loses his life in service, to pay the premiums by having them deducted from the proceeds of the insurance. Still another who at the time of seeking the Act's protection was insured under a policy possessing a cash surrender value—substantial in amount but not exceed-

> ing the unpaid premium—, must lose even that which he had before entering service unless he pay the premiums. He cannot avoid such loss by having the Government step in and pay the insurer, and hence he cannot even delay the payment beyond the time provided. Finally, one who desires to continue the insurance in force after the Act's protection ceases must pay the back premiums according to the terms of his policy, and this is so no matter what the cash surrender value may be.

Thus the sum of the decision below is that the only insureds who do not have to pay the defaulted premiums (with interest) are those, like respondents, who enjoy the protection of the insurance during their period of service and for some time thereafter, but who do not desire to continue the insurance after they have been settled again in civilian life, and whose cash surrender values are insufficient to make up the amount of the default.[19]

From the Government's point of view, there are also inequities. The purpose of the statutory remedies was to provide security, to the extent available, against *any loss* by the Government. To confine the Government's rights to these summary remedies would subvert that purpose, and in many cases would assure some loss because it would deprive the United States of the right to seek the deficiency. The admonition of

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[19] Another inequality is that between respondents, covered by the 1940 Act, who entered service before the country was at war, and the servicemen joining the armed forces after war was declared who were covered by the 1942 Amendment which explicitly requires reimbursement. *Infra*, pp. 64–65.

this Court in *Shriver* v. *Woodbine Bank*, 285 U. S. 467, 478–479, is pertinent:

> Here, the remedy provided [by the statute] is a summary and only partially effective supplement or alternative to that which the common law affords for enforcing the obligation to pay a sum certain. * * *. The very fact that the remedy is on its face inadequate to compel full performance of the obligation declared, is persuasive that it was not intended to be exclusive of applicable common law remedies, by which complete performance might be secured.

With respect to equality between servicemen, there is an additional factor—stressed in the *Nichols* case, 105 F. Supp. at 558—indicating that Congress intended the United States to be reimbursed in full under the 1940 Act, and that the statutory remedies should not be exclusive. The *Nichols* court noted that, if those in the position of the present respondents were to escape reimbursement, the result would be that a particular group of servicemen would have been furnished with free insurance protection by the United States with commercial insurance companies. Yet, just nine days before passage of the Civil Relief Act of 1940, Congress had passed the National Service Life Insurance Act. Under that Act, servicemen had to pay for their insurance protection. It is hardly credible that Congress, after passing an act requiring servicemen to pay for Government insurance, "would nine days later turn around and provide a certain group of servicemen with what in substance would be free insurance

protection with commercial insurance companies, with higher premium rates."[29]

*Finally,* it is significant that Congress was aware that the 1918 Act had been construed administratively as a guaranty and as requiring the insured to make full reimbursement, and that the statutory remedies had been administratively held not to be exclusive. In its final report to Congress relating to the 1918 Act, the Veterans' Bureau had advised that some collections had been recovered as a reimbursement for payments made by the United States under the guaranty (*infra,* pp. 56–57). When Congress is aware of the manner in which a statute has been construed by the agency or officials charged with the duty of carrying its provisions into effect, and then reenacts the legislation without evidencing any disapproval of the administrative construction, it is ordinarily presumed that the construction met with the approval of a Congress which did not change the statute. *United States* v. *G. Falk & Brother,* 204 U. S. 143, 150–152; *United States* v. *Philbrick,* 120 U. S. 52, 58–59; *National Lead Co.* v. *United States,* 252 U. S. 140, 145–146; *United States* v. *Bailey,* 9 Pet. 238, 255–256; cf. *United States* v. *Cerecedo Hermanos y Compañia,* 209 U. S. 337, 339; *United States* v. *Dakota-Montana Oil Co.,* 288 U. S. 459, 466; *Missouri* v. *Ross,* 299 U. S. 72, 75; *Commissioner* v. *Flowers,* 326 U. S. 465, 469.

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[29] Premiums were also required to be paid on insurance issued by the Government under the War Risk Insurance Act during the first World War. See *infra,* pp. 106–107. See also *Decisions of the Administrator of Veterans' Affairs, No. 742,* Vol. 1, Supp. 93, 105–106 (R. 88–89).

A corollary rule of like import leads to the same conclusion. It is settled that an established common law remedy is not taken away by a statute except by express enactment or necessary implication, *Shriver* v. *Woodbine Bank*, 285 U. S. 467, 478–9; *United States* v. *Chamberlin*, 219 U. S. 250; *United States* v. *Stevenson*, 215 U. S. 190, 197–199; *King* v. *Pomeroy*, 121 Fed. 287, 290–293 (C. A. 8); and see *Perego* v. *Dodge*, 163 U. S. 160, 167–168. Certainly, there is no express waiver of the common law remedy in the 1940 Act; nor must such a waiver be implied from the Act's summary remedies. Those sanctions are, as we have noted (*supra*, pp. 30–35), cumulative, not exclusive, and they are in no way inconsistent with the normal remedy of reimbursement.

4. *It would not be unjust or impracticable to require the insured to make reimbursement.*—The court below thought (R. 328–329) that all the considerations we have discussed were outweighed by the probabilities that (a) if the United States were allowed to recover from insureds in respondents' position it would make an unjust "profit," and (b) the Government could not accurately tell how much it was entitled to recover from any particular insured. In this argument, the court followed the opinion in *Hormel* v. *United States*, 123 F. Supp. 806 (S. D. N. Y.) (pending on appeal).[21]

[21] Since the issues in *Hormel* are identical with those raised in the instant case, further prosecution of the appeal in *Hormel* is being suspended pending this Court's disposition of the present case.

In *Hormel*, the judge, asserting that the guarantor may be reimbursed only in the amount which he is required to pay on his guaranty, held that under the 1940 Act there is no way of determining how much of the total paid by the Government to each insurer is attributable to a particular insured (*ibid.* at 812). He noted that there could be a "disparity" between the amounts paid by the Government to the insurers and the amounts which the Government was seeking to collect from the insureds through reimbursement (*id.* at 814), with a resultant "profit" to the Government (R. 328). Through a series of hypotheticals the district judge suggested that the "disparity" resulted from the fact that (a) the insured was liable to the insurer for the defaulted premiums plus interest at the policy loan rate, usually 5% or 6%, but the Government was liable to the insurer for the premiums plus interest fixed by the Secretary of the Treasury at only 3%,[22] and (b) the accounts between the various insurers and the United States were to be settled on a lump-sum-basis rather than on a per-policy-basis, making it difficult to trace the exact share attributable to a particular policy. The judge concluded that the failure of Congress to set out in the Act a specific plan for computing the amount owed by a particular insured "demonstrates

[22] The certificates delivered by the Government to the insurer on the basis of the "monthly differences", as security for the defaulted premiums, were to bear interest at a rate to be prescribed by the Secretary of the Treasury (see *infra*, p. 94). It so happened that the rate was fixed at 3 percent, 38 C. F. R. (1941 Supp.) 10.3312, but Congress could not have known at the time of passage of the Act the rate which the Secretary would fix and thus could not anticipate any "disparity."

that Congress did not intend that there should be any recovery from the insured" (123 F. Supp. at 812).

There are several reasons why this position is wrong. *First,* the Act *does* indicate the amount for which the insured is liable; it contemplates that the insured is to pay the defaulted premiums plus interest at the policy loan rate. The amount specified for deduction from benefits payable in the event of the insured's death while the policy was protected (which amount was to be credited to the United States) is "any unpaid premiums, with interest at the rate provided for in the policy for policy loans" (§ 409); and, on settlement, the cash surrender value—not to exceed unpaid premiums with interest at the policy loan rate—was to be credited to the United States (§ 411). This is the same amount which had to be paid to the insurer if the insured desired to keep the policy in force following the period of protection (§ 410).

This amount would not be difficult to ascertain in any individual case. The plan provided by the Act (§ 406) (see *infra,* pp. 93–95) in the form of monthly difference reports—on which were recorded the name of each protected policyholder, the amount of any premiums not paid by him when due, and the amount of any defaulted premiums subsequently paid on his behalf (even those deducted from the proceeds on maturity, as provided in § 410)—would certainly enable any layman to determine the amount chargeable to the Government's guaranty in each particular instance. This is emphasized by the terms of § 411 which require that in arriving at the balance due by

the Government on final settlement the records of each "case" be examined so that no policyholder would be charged "a greater amount * * * than the total of the unpaid premiums with interest" against the cash surrender value of *his* policy. Thus, so far as an individual policyholder is concerned, the fact that a portion of his unpaid premiums might be secured and represented by outstanding certificates issued on the basis of monthly difference reports which also included the unpaid premiums of others would not preclude a determination of the particular amount chargeable to his default. And, as to policies which matured by reason of the death of the insured, the effect of immediate payment of the defaulted premiums and interest from the policy proceeds, pursuant to § 410, eliminated that policy from the ultimate settlement procedure of § 411 and therefore could not significantly affect the amount required to be disbursed on account of any other policyholder.

*Second,* it is by no means certain that any disparity adversely affecting an insured would result from the payment by the Government of 3% interest on certificates. The Government had to pay this interest from the date of issuance of the certificates until one year after the Act ceased to be in effect, *i. e.,* 18 months after the war ended (§§ 407, 411, 604); the insured, on the other hand, was charged with interest at the policy loan rate on defaulted premiums, 6%, but *for the shorter period* ending not later than one year after separation from service (or two years afterward, under the 1942 Amendment). Thus, the aggegate interest paid by the Government over the *longer* period of time would

probably have exceeded the amount it could collect from the insured.[23]

In any event, the insured's legal obligation to the insurer was for the full amount of unpaid premiums and interest at the policy loan rate, as already pointed out, but where the Government fully discharged that obligation the insured would actually be called upon to pay no more than such indebtedness *less the cash surrender value of his policy.*[24] It is significant that an insured who did not pay premiums during his period of service (and two years thereafter) would not contribute to the cash surrender value *which nevertheless accumulated during that period* (the Government received credit for the enhanced amount at settlement). To the extent the cash surrender value was created or enlarged during that period, the insured lost none of his own money by application of that cash surrender value to reduce the amount payable to the insurer on final settlement. On the contrary, he gained thereby, for the insured is never charged, on final settlement, the full amount of the defaulted premiums with interest at the policy loan rate, but only the difference between such sum and the

[23] It should be observed, moreover, that respondents' insurer had elected to settle under the procedures established by the 1942 Amendment (R. 135) and pursuant to those procedures the United States actually paid the insurer the amount of the unpaid premiums plus interest at the policy loan rate for the period the policies were under protection. Under the facts of this case, therefore, no "profit" could accrue.

[24] Section 411 (*infra*, p. 82) provides that the cash surrender value of *each policy*, not to exceed defaulted premiums plus interest *on such policy*, was to be credited against the Government's liability on the guaranty.

cash surrender value—to the latter of which, in most instances, he made little or no contribution whatever.

Clearly illustrating this point is the record relating to respondent Plesha's protected policy:—Plesha's total premium payment during the more than six years his policy was in force was $14.98, one fourth of one annual premium, which he paid shortly before he entered the service (R. 295, 275). When his policy was brought under the protection of the Act, it had no cash surrender value at all (R. 295). By the time the protection ended, however, the cash surrender value (enhanced by virtue of the Government's guaranty) had increased to $82.88. That value, which was more than five times his initial and only payment to the insurer, was credited toward his debt to the insurer on final settlement (R. 127).[25]

*Third*, while it is true that a guarantor's right of reimbursement is normally limited to his net outlay, there is no reason why, in the absence of any overreaching, the guaranty arrangements between the parties cannot provide otherwise. As for the servicemen insureds, the situation is no different from the usual surety situation where the surety company charges a fee for its undertaking; the Government frequently charges a fee for its guaranty, perhaps the

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[25] Veterans' Administration records relating to the protected policy involved in *United States* v. *Hendler*, 225 F. 2d 106 (C. A. 10), show that Hendler paid his insurer only one-fourth of his first $213.25 annual premium, amounting to about $53, before his policy was brought under the protection of the Act. When the protection ended, the cash surrender value on his policy had increased to $805, more than fifteen times Hendler's single payment to his insurer.

most common situation being the ½% charge in connection with private home mortgages guaranteed by the Federal Housing Administration. Congress may have contemplated that any difference in interest rates between that paid to the insurer on certificates and that provided for policy loans should be retained by the Government against its contingent liabilities under the Act.

It is the normal rule that the guarantor is entitled to be reimbursed for all expenses reasonably incurred by him in connection with his undertaking. *Restatement of Restitution,* Sec. 80, *Com. b*; 4 Williston on *Contracts* (Rev. Ed.), p. 3666. The possible disparity referred to in *Hormel* may be said to reflect and to offset, at least in part, the Government's expenses in connection with the entire undertaking under Article IV of the Act. The experience under the 1918 Act where a deficiency appropriation was necessary (*infra,* fn. 38, p. 55), the anticipation that reimbursement collections would not be possible in all cases, the administrative expenses involved, all suggest that Congress may have intended to spread the burden of costs through the system it adopted.

*Fourth,* it should be noted that under the theory of the decision below, and under the *Hormel* ruling, the only remedy available to the Government in the circumstances of this case is the lien on the policy under § 408 (*infra,* p. 81). But it seems plain that, if the courts' reasoning is correct, that remedy, too, would have to be a nullity. If the United States is limited in reimbursement to the precise amount it pays to the insurer on behalf of the insured, and if that amount

is not ascertainable, by parity of reasoning the Government would similarly be precluded from exercising the remedy of a lien. Under the courts' theory, there would be no way of determining the amount due to the United States in enforcing the lien. Every argument the *Hormel* opinion makes to show the impossibility of ascertaining the amount of the Government's claim would also apply in ascertaining the amount which the lien secures. The lien is a charge on the policy to the extent of that claim, and if the extent of the claim cannot be ascertained, neither can the extent of the lien. Thus, to adopt the *Hormel* reasoning would nullify the statute's remedy of a lien, and would leave the Government with no remedy at all, a manifest distortion of the congressional purpose.

*Finally*, even if we accept the premise of the *Hormel* opinion that any recovery by the United States would have to be measured by the exact amount it paid to the insurer on behalf of a particular insured, it does not follow that, because it is difficult to determine that amount under the lump-sum settlement method of the 1940 Act, the United States should have no recovery at all. If, as we have shown, the purpose and terms of the legislation are inconsistent with a Congressional intention to provide free commercial life insurance for a particular group of servicemen, but instead reflect a general policy that servicemen's debts are only to be temporarily deferred (§ 100) and particularly that the United States shall be safeguarded against "loss" in the insurance transaction (§ 408), then reference to difficulties in admin-

istration provides no sufficient justification for departing from or countermanding that policy. Cf. *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617–618. If the Government is to be limited to its net outlay, the case should be remanded to the trial court for appropriate computations to establish the precise amount it has disbursed on behalf of a particular insured.[26]

C. NO EXPRESS STATUTORY AUTHORITY IS NECESSARY FOR THE UNITED STATES TO OBTAIN REIMBURSEMENT FROM THE INSURED

Another foundation of the ruling below is the assertion that under the theory of the *United States* v. *Gilman*, 347 U. S. 507, there can be no "common law liability in favor of the Government where it is not provided for in the statute, where it is not an 'established type of liability', and where the legislative history is inconclusive as to whether Congress intended such a liability" (R. 331). This holding disregards the long established rule that no specific statutory authorization is required for the judicial enforcement of the contractual or other property rights of the United States. It misconceives and misapplies the *Gilman* decision, and it fails to perceive that the summary remedies for reimbursement set forth in the 1940 Act evidence a Congressional "position" (cf. 347 U. S. at 511) to require reimbursement.

[26] Similarly, even if respondents' argument, made below, that they cannot be charged for the additional year's protection extended by the Veterans' Administration (see fn. 1 *supra*, p. 4), is sustained, it does not follow that the United States is not entitled to reimbursement for the cost of protection for their period of military service plus one year following their separation from service.

1. This court held, as early as 1818, that no express statutory authority is necessary to enable the United States to recover for a breach of contract, since "It would be strange, to deny to them [*i. e.*, the United States] a right which is secured to every citizen." *Dugan* v. *United States*, 3 Wheat. 172, 181. In *Cotton* v. *United States*, 11 How. 229, 231–232, where a statute provided a criminal penalty for cutting timber on public lands but prescribed no civil remedy, the Court, affirming the right of the United States to bring an action of trespass, declared, "It would present a strange anomaly, indeed, if, having the power to make contracts and hold property as other persons, natural or artificial, they [*i. e.*, the United States] were not entitled to the same remedies for their protection. * * * [A]s a corporation or body politic they may bring suits to enforce their contracts and protect their property." See also, *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 550; *United States* v. *Standard Oil Co. of California*, 332 U. S. 301, 315, fn. 22. This rule applies not only in actions on express contracts and in tort but also in suits based on various quasi-contractual obligations or contracts implied in law. Examples, among many, include the right of the United States to recover money paid by it under a mistake of law or fact (*e. g.*, *Wisconsin C. R. R. Co.*, v. *United States*, 164 U. S. 190); the right of the United States as drawee of a check to recover money paid on a forged endorsement (*e. g.*, *Clearfield Trust Co.* v. *United States*, 318 U. S. 363; *United States* v. *National Exchange Bank*, 214 U. S. 302); and the right of the United States to set aside

transactions for fraud (*United States* v. *San Jacinto Tin Co.*, 125 U. S. 273, 279–285). The right to maintain suit to establish and safeguard the Government's contract and property interests is an inherent power of the United States. It "is independent of statute" (*United States* v. *Bank of Metropolis*, 15 Pet. 377, 401; *United States* v. *California*, 332 U. S. 19, 26–27). It follows that, if the United States undertakes the obligations of a guarantor, it needs no express statutory authority to avail itself of the same common law remedies which any guarantor would have.

2. The decision in *United States* v. *Gilman*, *supra*, certainly cannot be read as discarding this basic precept, expounded more than a hundred years ago and emphatically reiterated through those years in a wealth of decisions of this Court. In *Gilman*, the Court was presented with a problem raising policy issues with unique implications under a particular statute with a purpose, history, and provisions entirely unlike the one at bar. The question there presented was whether the United States, having been held liable for the negligence of its employee in a suit under the Federal Tort Claims Act (28 U. S. C. 1346 (b), 2671 *et seq.*), could recover indemnity from that employee. In denying recovery, the Court emphasized the disciplinary effect of such a suit upon those who make government service their career.[27] It pointed to the potential heavy financial burden in-

[27] "When the United States sues an employee and takes him to court, it lays the heavy hand of discipline on him, as onerous to the employee perhaps as any measure the employer might take, except discharge itself." 347 U. S. at 510.

volved, one which is usually completely out of proportion to an employee's financial responsibility, and underscored the probable effects on morale, on seniority, and on the promotion and demotion possibilities of the employee. 347 U. S. at 509–510. The absence of an expression of Congressional position on these delicate, complex, and wholly internal policy questions was an added reason for denying recovery.[28] The Court, however, distinguished cases involving "an established type of liability" (*id.* at 509) as not requiring specific statutory sanction.

Here, we are dealing with such an established type of liability, *viz.*, the debtor's obligation to reimburse his guarantor. Moreover, the considerations militating against recovery in *Gilman* are certainly not involved in this case. There, the Court was construing a statute with an overriding purpose to impose liability upon the United States for torts committed by its employees while acting in furtherance of Government business, a liability which every employer has.[29] As we have shown (*supra*, p. 17, *et seq.*; *infra*, p. 99 *et seq.*), the broad purpose of the Civil Relief Act of 1940 is not to assume the obligations of servicemen or to effect the

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[28] The Court also pointed to the Tort Claims Act provision making a judgment against the United States a bar to an action against the employee (28 U. S. C. 2676) and to certain explanatory statements at Congressional hearings, which, if anything, indicated a Congressional position opposed to indemnity. 347 U. S. at 511, fn. 2.

[29] The liability of the United States under the Tort Claims is conditioned upon the employee's tort being committed "while acting within the scope of his office or employment" (28 U. S. C. 1346 (b)), and is subject to numerous exceptions (*id.*, 2674, 2680).

discharge of their debts, but merely to accomplish a temporary postponement of those obligations, none of which were incurred by reason of Government employment. Respondents are not Government employees whose activity on behalf of the United States and in furtherance of its affairs subjected them to an obligation for which the United States, under moral or legal grounds, is vicariously liable. On the contrary, respondents' obligation for defaulted insurance premiums arose out of their private affairs. It stems from contracts executed for their personal protection before they joined the armed forces, contracts which were contined in force at their own election, essentially for their own benefit, and which obligated them for a liquidated amount known to them at all times and presumably fitted to their civilian ability to pay. Enforcement of that obligation involves no problem of discipline or morale or internal Federal relationships. Thus, the crucial factors in *Gilman* are not present here.[30]

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[30] In holding that the *Gilman* case "is clearly distinguishable" from the present situation, the Tenth Circuit, in *United States* v. *Hendler*, 225 F. 2d 106, 112–113, discussed the dissimilar purpose and policy of the Tort Claims Act and then stated:

"Here we are dealing with the Government and its military servicemen in times of war, for whom it already had made provision for cheap life insurance before the passage of this Act. In this Act it was not concerned primarily with affording servicemen additional insurance. Its main concern was with the protection of their vested private rights. It intended to protect those rights by suspending the right to enforce legal obligations such as breach of contract resulting because of military service, and yet affording some protection to creditors. For that reason it gave servicemen who had commercial insurance in force the right to come in under the provisions of the Act and prevent the forfeiture of such insurance, because of their inability to make the payments

3. The tendency, reflected in the opinion below, to extend the *Gilman* ruling outside the Tort Claims Act field may have serious consequences in other areas of Government litigation, whenever the Government's rights are based upon implication or common law principles not specifically detailed in a statute. But even if *Gilman* does have a wider application than we believe, the special requirement it suggested—that Congress must indicate its position on policy as to remedies available to the United States—is met here. Elsewhere, we show that the legislative history (*infra*, p. 51, *et seq.*), the purpose and the terms of the Act itself (*supra*, p. 16 *et seq.*), particularly the summary remedies afforded the United States under Article IV (*supra*, p. 30 *et seq.*), disclose a Congressional policy that the insured is not to receive insurance gratuitously and that the United States should be able to recover from him the defaulted premiums paid on his behalf. Thus, Congress *has* taken a "position" on the question of indemnification or reimbursement. By the clearest implication, the provisions of the Act show that Congress intended that the insured should not obtain free insurance and that he or his funds should reimburse the United States; "what is clearly

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during their time of service, by guaranteeing the premiums during their military service and affording them the opportunity to continue such insurance in force when they returned. Not only do we find nothing in the legislative history indicating that this service was to be a gratuity to servicemen but on the contrary we think that the legislative history, considered against the background of the purpose sought to be accomplished by the passage of the Act, requires the conclusion that the usual rules of guarantyship were intended to apply to servicemen availing themselves of the additional benefits of the Act."

implied is as much a part of a law as what is expressed." *Luria* v. *United States,* 231 U. S. 9, 24; *South Carolina* v. *United States,* 199 U. S. 437, 451; *McHenry* v. *Alford,* 168 U. S. 651, 672.

II. THE LEGISLATIVE HISTORY OF THE 1940 ACT, OF ITS 1918 COUNTERPART, AND OF ITS 1942 AMENDMENT, SHOW THAT CONGRESS INTENDED TO CREATE A TRANSACTION OF GUARANTY AND CONTEMPLATED REIMBURSEMENT BY THE INSURED

The 1940 Act has its roots in the Soldiers' and Sailors' Civil Relief Act of March 8, 1918, 40 Stat. 440, enacted during World War I. The general purpose of that and the 1940 Act are identical and their language is virtually the same; the 1940 Act has been described by this Court as a "substantial reenactment" of the 1918 Act (*Boone* v. *Lightner,* 319 U. S. 561, 565), and by its draftsmen as "an up-to-date revision" of the 1918 Act.[31] Because of this close affinity, the legislative history of the 1918 Act and its administrative construction are pertinent and instructive in interpreting the later reenactment. *Ibid.,* 319 U. S. at 565–569; *Allen* v. *Grand Central Aircraft Co.,* 347 U. S. 535, 541. Similarly, guidance in interpreting the 1940 Act may be sought from its 1942 Amendment and the legislative history of that Amendment. The history of these three related statutes discloses nothing to indicate that Congress intended that payments by the Government to protect servicemen's private insurance policies should be a gratuity to the servicemen; on the contrary, "the

[31] Letter of Secretary of War Stimson to the Speaker of the House, H. Rept. No. 3001, 76th Cong., 3d Sess., p. 5.

legislative history, considered against the background of the purpose sought to be accomplished by the passage of the Act, requires the conclusion that the usual rules of guarantyship were intended to apply" (*United States* v. *Hendler,* 225 F. 2d 106, 113 (C. A. 10)); and see *United States* v. *Nichols,* 105 F. Supp. 543 (N. D. Ia.), appeal dismissed, 202 F. 2d 956, 958 (C. A. 8)).

### A. THE LEGISLATIVE HISTORY OF THE 1918 ACT

In this portion of the brief we shall set forth only a short summary of the legislative history of the 1918 Act. A detailed discussion is set forth in Appendix E, *infra,* pp. 99–108.

As originally introduced, the insurance provisions of the proposed law simply prohibited the forfeiture or lapse of a serviceman's life insurance policy for nonpayment of premiums, and provided that the defaulted premiums should be charged to the policy as a loan. Representatives of the insurance industry vigorously objected, pointing out that an insured normally is not obligated to pay future premiums, that the bill compelled the insurer to keep the policy in force but failed to create an enforcible obligation or indebtedness from the insured to the insurer for the premiums; instead, the bill really gave the insured an option to pay or not to pay the premiums, as he wished (which, we note again, is exactly the effect of the decision below).[32] To

[32] § 13 of S. 2859, 65th Cong., 1st Sess.; *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d Sess., on S. 2859 and H. R. 6361,* pp. 18–21, 31, 102 *et seq.*

meet this objection, the insurance provisions were revised and were presented as a separate bill entitled, "A bill to provide a mode of *guaranty* against lapse or forfeiture of life insurance policies held by persons in military service."[33] The revised proposal, which was later enacted as Article IV of the 1918 and 1940 Acts, provided for a consensual arrangement creating an enforcible obligation on the part of the insured for his defaulted premiums, payment of which was guaranteed by the United States. This is confirmed by the testimony given at committee hearings by Dean Wigmore, the principal draftsman, and by the committee reports. See Appendix E, *infra*, pp. 99–108.

Dean Wigmore testified that the new proposal met the objections of the industry. *Hearings, supra*, fn. 32, at p. 123 *et seq*. He agreed with Senator Overman's interpretation that under the new proposal the serviceman would be subject to a debt, for he would owe the premiums to the insurance company,[34] and that if he failed to pay that debt, the Government would (*ibid.*, at p. 134). Questioned as to whether the Government could obtain repayment from the serviceman, Dean Wigmore answered affirmatively and went on to explain that in his belief the cash surrender value of the policy, which was subject to the Government's lien, would in most instances be sufficient to recoup the expenditure.[35] *Id.*, at 135. He was not asked specifically and therefore

[33] Emphasis added. The text of the revised bill is set out at *Hearings, supra*, fn. 32, at pp. 124–131.

[34] Compare the industry's objections to the original bill which failed to provide an enforcible obligation of the insured, *infra*, pp. 101–103.

[35] See fn. 11, *infra*, p. 105.

furnished no direct answer to whether, in his view, the Government would be denied the right of recourse against the servicemen for any deficiency. On the other hand, he had stressed earlier that the whole approach in writing the original bill was merely to suspend remedies for a temporary period, not to deprive any creditor of his rights or to relieve any debtor of his obligations. See *supra*, p. 19, and *infra*, pp. 99–100. The revised insurance provisions did not change that approach; they were designed to strengthen it. Their purpose was to meet the problem of insurance contracts by creating a debt enforcible against the policyholder for the unpaid premiums, and, through the Government's guaranty, assuring payment of that debt.

### B. THE ADMINISTRATIVE CONSTRUCTION OF THE 1918 ACT

Although the word "guaranty" does not appear in the language of Article IV of the 1918 Act,[36] its provisions and the foregoing legislative history indicate beyond any doubt that the transactions envisaged by the Congress was one of guaranty, a concept which is, of course, familiar in the common law. The terms of the statute and the legislative background indicate also that Congress was not bestowing a gratuity but was contemplating full reimbursement for the sums paid under the guaranty. This view is confirmed by the administrative construction and operation of the 1918 Act.

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[36] As noted (*supra*, p. 53), the word had been in the title of the revised separate insurance bill drafted by Dean Wigmore and the insurance industry representatives. The title was dropped, however, when the insurance provisions were reinserted as Article IV of the Civil Relief Act.

From the outset, the 1918 Act was construed by the Treasury Department's Bureau of War Risk Insurance, which administered it, as providing a guaranty.[37] It was also so construed by the Bureau of the Budget and the President concurred.[38] That the Government was not bestowing a gratuity but was contemplating reimbursement for sums expended is reflected in the application which servicemen were required to sign in order to obtain the benefits of the Act.[39] While the application was not wholly clear as

[37] *Memorandum Regarding Life Insurance of Men in Active Military Service under the Soldiers' and Sailors' Civil Relief Act*, (G. P. O. 1918), p. 3. This printed pamphlet, distributed by the Treasury Department for the use and information of insurance officers in explanation of the Act, states that the "Government will *guarantee* to the insurance company or organization the payment of premium * * *." [Emphasis added.]

[38] In May 1922, President Harding transmitted to Congress a request for a $25,000 appropriation for the Veterans Bureau to effect a settlement with the insurance companies in accordance with the final accounting provisions of the 1918 Act. *House Document No. 308, 67th Cong., 2d Sess.* Transmitted with the President's communication was a letter from the Director of the Bureau of the Budget, in which the President stated he concurred, which explained that the 1918 Act had provided for a "guarantee" of payment of premiums. The appropriation was passed by the Act of July 1, 1922, 42 Stat. 771.

[39] The application form, issued April 8, 1918 (T. D. 26 W. R.), is set out in full in *Regulations and Procedure, United States Veterans' Bureau (Active and Obsolete Issues as of December 31, 1928), Part I*, pp. 10–11. Included in that application signed by the insured were the following two paragraphs:

"I hereby apply for the benefits of Article IV of the soldiers' and sailors' civil relief act, with reference to the above-described insurance on my life. This application is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of such article.

"I agree that the United States shall be *reimbursed* for any money advanced on account of unpaid premiums on the above

to whether such reimbursement was to be derived solely from the proceeds of the policy and its cash surrender value, the language certainly precludes the contention that a gratuity rather than a debt was contemplated. The agreement to "reimburse" necessarily carried with it an acknowledgement of a future obligation or debt of the insured to the United States; otherwise, there would be no occasion for repayment. It was to assure such repayment that the Act provided for a lien to the United States, and the form of the application gave a consensual or contractual basis for that lien, which would not be available at common law.[40]

The Veterans Bureau subsequently reported to Congress that, during the entire period the 1918 Act was in force, a total of 7,745 applications for insurance protection were received and approved. This represented life insurance in an amount in excess of

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policy (with interest at the rate of 5 percent per annum), out of the above policy, in the event of death or maturity, and out of any cash value, in the event such premiums are not paid within one year after the termination of the present war or the termination of my period of military service, whichever date is the earlier." [Emphasis added.]

[40] Regulation No. 21, promulgated February 26, 1919, also underscores the expectation of reimbursement. § 409 of the 1918 Act prohibited any loan, settlement, or payment of dividend on a protected policy which might prejudice the security of the lien of the United States. Regulation No. 21 permitted a loan on the policy "only when the cash surrender value of the policy * * * would at all times be sufficient to satisfy the claims of the United States, already accrued or which may accrue under the provisions of the act, and in addition thereto be sufficient for the payment of the new loan * * *." *Regulations and Procedure, United States Veterans' Bureau (Active and Obsolete Issues as of December 31, 1928), Part I*, p. 39.

$12,500,000 and a guaranty by the United States of yearly premiums of over $362,000. *Report of the United States Veterans Bureau (1924)*, p. 445. (Compare the experience under the 1940 Act; see fn. 48, *infra*, p. 63). Of this amount, servicemen ultimately paid their insurers all but approximately $20,000. That is, roughly 95% of the premiums guaranteed were paid to the insurers directly by the insureds. Pursuant to its guaranty, the United States paid the small balance. Significantly, however, the Report informed Congress that some recoveries had in fact been made by the Bureau from the insureds to reimburse the Government for its outlay. *Ibid.* The Veterans' Administration has stated:

> The precise extent of the Government's efforts to collect from insureds who permitted their insurance to lapse under conditions requiring the Government to pay to insurers the differences between the premiums with interest and the cash surrender value of the insurance is not known, but it is clear that, in the administration of the 1918 Act, collections were effected in some cases. A list of at least 14 such cases is presently at hand. They reflect collections during the years 1923–24, and one such collection was made as late as October 8, 1925. For present purposes the amount of such collections and the extent to which efforts were made to effectuate them are matters of no importance. The significant thing is that they negative any idea or assertion that an administrative practice prevailed not to regard the insured as indebted to the United States. [*Decisions of the Administrator of Veterans'*

*Affairs, No. 742,* Supp. to Vol. 1, p. 93, 98 (April 1947); R. 72–73.]

This practice reflected the administrative interpretation of the 1918 Act that the insured was indebted to the United States and could be called to account. The court below, in concluding that reimbursement is not obtainable under the 1940 Act, made no mention of the manner in which the 1918 Act was interpreted and administered.

C. THE LEGISLATIVE HISTORY AND ADMINISTRATIVE CONSTRUCTION OF THE 1940 ACT

1. With the advent of the national defense program following the outbreak of World War II and the accompanying enlargement of the armed forces, the need for servicemen's civil relief again became imperative. Most of the benefits of the 1918 Act were revived in the summer of 1940. By amendments to the National Guard Bill,[41] and the bill which became the Selective Training and Service Act of 1940,[42] the benefits were extended to persons brought into the armed forces under those statutes. These amendments in effect incorporated the 1918 Act by reference. But they expressly excluded the insurance and tax provisions of the 1918 Act.[43] None of the congressional committee reports relating to these bills discusses these exclusions.

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[41] 54 Stat. 858, 860 (approved August 27, 1940).

[42] 54 Stat. 885, 895–6 (approved September 16, 1940).

[43] Senator Overton, the sponsor of the amendments, explained that they were temporary in nature and that the War Department would soon draft a separate bill. 86 Cong. Rec. 10052, 10318, 10500.

In mid-August 1940, bills sponsored by the War Department which in substance proposed a detailed reenactment (as distinguished from incorporation by reference) of the 1918 law were introduced.[44] These bills contained an Article relating to commercial life insurance protection different from the 1918 law only as to one aspect of the method of administration (see *infra*, fn. 9, p. 109). In their reports on the bills, both the Senate and the House Committees on Military Affairs referred to the insurance article as a *guaranty* and used no language suggesting a gratuity.[45] Apart from reference to the urgent need for enactment of the bill, there was little discussion on the floor of the Senate with respect to the insurance provisions. 86 Cong. Rec. 12837.

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[44] H. R. 10338, 76th Cong., 3d sess., was introduced in the House by Representative May; Senator Overton introduced its counterpart, S. 4270, in the Senate. See 86 Cong. Rec. 10292; H. Rept. No. 3001, 76th Cong., 3d Sess., pp. 4–5.

[45] S. Rep. No. 2109, 76th Cong., 3d Sess., p. 3, explains with regard to the insurance provisions: "In the case of life-insurance policies, upon application by persons in the military services, the Administrator of Veterans' Affairs may *guarantee* payment of premiums in order to prevent lapsing or forfeiture of policies. Such persons may, within 1 year after leaving the military service, pay up premiums unpaid by them and resume payment of regular premiums. If they do not, the policy lapses and the cash surrender value accrues to the Government to the extent necessary to meet the cost of the premiums which it has guaranteed." H. Rept. No. 3001, 76th Cong., 3d Sess., p. 4, comparing the proposed bill with the 1918 law, states as to the insurance provisions: "The only change in this article relates to method of administration. In *guaranteeing* insurance premiums, certificates issued by the Veterans' Administration are used, instead of $100 bonds issued by the Treasury Department." [Emphasis added.]

In the House, however, a very significant discussion occurred. 86 Cong. Rec. 13132–13133. The debate there reveals that it was the Congessional purpose—certainly the House's understanding—that the insurance provisions of the proposed bill would not result in conferring a gratuity, but, rather, would provide a period of suspension as to the payment of insurance premiums; that, just as in the case of other civil obligations of the serviceman, the measure provided for a temporary delay and not for a wiping out of the obligations accruing; that the Government would simply guarantee payment of defaulted premiums during that period of suspension; and that, if the Government had to pay the premiums by reason of its guaranty, the serviceman would later be obligated to reimburse it for such payment. We have set out the discussion in Appendix F, *infra*, pp. 109–111.

This discussion, despite some minor inaccuracies as to the technical aspects of the bill, sharply contradicts the idea that Congress intended that Government payments of defaulted premiums were not to be reimbursed. It shows clearly that, the only time the specific question came up in Congress, those managing the bill stated the purpose and expectation to be that the recipients of the insurance protection would, at some later period, have to repay the Government for its expenditures.[46]

[46] The Tenth Circuit, in *United States* v. *Hendler*, 225 F. 2d 106, regarded this discussion as to the meaning of the bill, which took place after the bill was reported out favorably by the Committees and which dealt specifically with the problem of the insured's personal liability, as entitled to considerable weight. See also *United States* v. *Nichols*, *supra*, 105 F. Supp. at 553–554.

Thereafter, the House and Senate bills went to conference. The Senate bill (S. 4270) was adopted with minor changes not relevant here. Since the Senate bill did not differ from the House bill in its insurance provisions there was no occasion for the conference report (H. Rept. No. 3030, 76th Cong., 3d Sess.) to comment on this aspect. The bill was enacted on October 17, 1940, 54 Stat. 1178.

2. Because the 1940 Act was amended in 1942 before the termination of World War II and before the protection given by that Act had ended, there was hardly occasion for a fixed administrative construction or practice to become established before the 1942 amendment. But, as in the case of the 1918 Act, the application form and the regulations issued under the 1940 Act speak of a *guaranty* and look toward the insured's reimbursement of payments which the United States might make under that guaranty. *E. g.*, see 38 C. F. R. (1941 Supp.) 10.3300, 10.3309, 10.3310; R. 293. However, being closely patterned on the provisions of the Act itself, they do not refer specifically to personal reimbursement as distinguished from reimbursement from the proceeds of, or lien upon, the policy.[47] In

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The court below minimized it, however, because the earlier Senate Report on the bill spoke only of reimbursement from the cash surrender value (and was silent as to personal liability). R. 330.

[47] A number of insurance agents, some in good faith and some not, sold life insurance at high premium rates to persons expecting immediate induction into the service by representing to them that they would have to pay only one quarterly premium and that thereafter the Government would take over the expense and they would have free insurance during their period in service. See *Berenbeim* v. *United States*, 164 F. 2d 679 (C. A. 10), certiorari denied, 333 U. S. 827; *Decisions of the Administrator*

the court below, respondent stressed the ambiguous statements of certain Veterans' Administration officials (R. 45–48). These officials, when informally answering inquiries made by persons in the insurance field, replied that the Act did not have provision for collecting from the insured the amount paid by the Government. They did not say that the insured would not be liable for repayment, but only that the Act did not have any provision for collection. Actually, of course, there was no express provision, and that is what gives rise to the present litigation. But whatever inferences were drawn from these enigmatic replies, it has long been settled that the United States can neither be bound nor estopped by the mistaken representations of its officials, particularly where the statements are informal. *Federal Crop Ins. Corp.* v. *Merrill,* 332 U. S. 380; *United States* v. *Stewart,* 311 U. S. 60, 70; *Whiteside* v. *United States,* 93 U. S. 247, 257; *Lee* v. *Munroe,* 7 Cranch. 366.

The first time the Veterans' Administration took a formal position on the point, with reference to the 1940 Act, was in *Decisions of the Administrator of Veterans' Affairs, No. 513* (March 1, 1943), Vol. 1, p. 781 (set out at R. 56–61), and it was there determined that the insured is obligated to reimburse the United States. That decision was carefully reexamined and reaffirmed in *Decisions, supra. No. 742,* Supp.

*of Veterans' Affairs, No. 742,* Supp. to Vol. 1, pp. 98, 100; R. 75. See also, R. 181–184. In the instant case, respondent Plesha, who obtained his policy shortly before entering the service, testified that he understood he would have to pay the premiums, not the Government. R. 183–184.

to Vol. 1, p. 93 (April 1, 1947) (set out at R. 62–94). Those decisions express the formal and considered position of the administrative agency. And from that time until the present, the agency has consistently adhered to that position and has acted on it in a multitude of cases.[48]

D. THE LEGISLATIVE HISTORY OF THE 1942 AMENDMENT

"Subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject." *Tiger* v. *Western Investment Co.*, 221

[48] By June 30, 1942, the Veterans' Administration had approved more than 23,400 applications for protection of private life insurance policies under the 1940 Act, representing insurance in the face amount of over $56,500,000. *Annual Report of the Administrator of Veterans' Affairs for the Fiscal Year Ending June 30, 1942*, p. 31. We are informed by the Veterans' Administration that more than 4,700 certificates, to secure defaulted premiums in excess of $3,082,000, were issued to insurers under the guaranty provisions of the 1940 Act. Some of these certificates were revoked from time to time as insureds paid their past due premiums.

Since March 1943, when the Veterans' Administration formally ruled that a debt rather than a gratuity resulted from the Government's payment of the insured's defaulted premiums under the 1940 Act, it has been the administrative practice to seek reimbursement after the United States, pursuant to its guaranty, has made payment to the insurer. A great many collections have been effected through the years and in numerous instances payment was effected by set-off against NSLI dividends, as in the present case. In holding these collections improper and thus invalidating the consistent administrative practice, followed under both the 1918 and 1940 Acts, the court below does not say that the agency's interpretation is "clearly wrong" or that "a different construction [of the Act] is plainly required" (*United States* v. *Jackson*, 280 U. S. 183, 193; *United States* v. *Citizens Loan Co.*, 316 U. S. 209, 214); indeed, it concedes that Congress may have intended it (R. 331). An administrative interpretation over a long period of years, controlling collections in probably thousands of instances, is entitled to more weight than the court below afforded it.

U. S. 286, 309; *Great Northern Ry. Co.* v. *United States,* 315 U. S. 262, 277; cf. *United States* v. *Hutcheson,* 312 U. S. 219; *Brown* v. *Duchesne,* 19 How. 183, 194. Accordingly, in seeking to determine the legislative purpose of the 1940 Act resort may properly be had to certain later legislative events.

Within a few months after enactment of the 1940 Act it became apparent that various of its provisions needed amendment. A number of bills were introduced in the 77th Congress proposing several changes.[49] A change in the insurance provisions was suggested by the Veterans' Administration in April 1941. It transmitted to the Senate a bill intended to clarify and liberalize Article IV of the 1940 Act and to eliminate much of the administrative work required under that law.[50] It specifically described the transaction as one of guaranty and it went on and made explicit that the serviceman must reimburse his guarantor for its payment of his defaulted premiums. As enacted, the law reads (§ 406, *infra,* pp. 86–87; emphasis added):

> Payment of premiums and interest thereon * * * becoming due on a policy while protected under the provisions of this article *is guaranteed by the United States,* and if the amount so *guaranteed* is not paid to the insurer prior to the expiration of the period of insurance protection * * * the United States shall pay the

[49] See S. Rept. No. 1558, 77th Cong., 2d Sess., p. 1; H. Rept. No. 2198, 77th Cong., 2d Sess., pp. 1–2; 88 Cong. Rec. 5363.

[50] The Veterans Administration letter of transmittal explaining the various proposed changes is set out in S. Rept. No. 716, 77th Cong., 1st Sess., pp. 4–6 (Oct. 20, 1941).

insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, *shall become a debt due to the United States by the insured* on whose account payment was made and, notwithstanding any other Act, *such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.*

The provisions of the Veterans' Administration's proposed bill were substituted intact for those contained in a bill (S. 1372, 77th Cong., 1st Sess.) to amend Article IV which was then under consideration before the Senate Committee on Military Affairs.[51]

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[51] *Decisions of the Administrator of Veterans' Affairs, No. 742*, Vol. 1, p. 100 (R. 75–76), points out that the new clarifying proposal, as introduced, read in part:

"The amount paid by the United States to an insurer shall become a debt due to the United States by the insured * * *."

Pursuant to a proposal made by the Association of Life Insurance Presidents on May 16, 1941, this language was changed to read:

"The amount paid by the United States to an insurer On Account of Applications Made Subsequent to Approval of This Act shall become a debt due to the United States by the insured * * *."

As reported out of the Senate Committee on Military Affairs (S. Rept. 716, *supra*, at p. 3) the language (§ 406) was changed to read:

"The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured * * *."

The Committee Report does not comment on these changes in language.

Recommending its passage, the Senate Committee stated in its report:

> The proposed amendment has been drafted in accordance with the suggestions of the Veterans' Administration *for the purpose of clarification* and will not effect any substantial change in the basic purpose of the bill * * *.
>
> The purpose of the proposed amendment is to substitute a more workable law and to avoid much of the administrative work required under article IV as now enacted. It will *liberalize* the existing law * * *.[52]

The bill was promptly passed by the Senate and then was referred to the House Committee on Military Affairs. 87 Cong. Rec. 8708–8709, 8808. Meanwhile, a subcommittee of the latter had been appointed to study the numerous proposals to amend other aspects of the 1940 Act. As a result of its study, the subcommittee made a recommendation to the full committee in the form of a bill (H. R. 7029, 77th. Cong., 2d Sess., and see H. Rept. No. 2198, 77th Cong., 2d Sess., pp. 1–2). This bill, too, contained a section stating that the payment by the United States of defaulted premiums shall constitute a debt due from the serviceman to the United States.[53] Following hearings on H. R. 7029,[54] the House Committee revised

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[52] S. Rept. No. 716, 77th Cong., 1st Sess., p. 3 (emphasis added).

[53] Sec. 409 of H. R. 7029. The bill is set out in full in *Hearings before the Committee on Military Affairs, H. Rep., 77th Cong., 2d Sess., on H. R. 7029*, pp. 1–7. The language of Sec. 409 of this bill is identical with the part of Sec. 406 of S. 1372, as passed by the Senate, quoted above in fn. 51.

[54] Extracts from these hearings are quoted in *Decisions of the Administrator of Veterans' Affairs, No. 742*, Supp. to Vol. 1, at pp. 100–102; R. 77–81. During the course of these hearings,

that bill and caused H. R. 7164, 77th Cong., 2d Sess. to be introduced as a substitute. The latter bill (H. R. 7164) did not contain the language of § 406 of the Senate bill (S. 1372, *supra*, pp. 64–65) describing the transaction as a guaranty and the resulting accrual of a debt, although its provisions tend to indicate the same results.[55] The Committee Report states generally that the purpose of the bill is to provide additional benefits and that language has been added "for the purpose of clarification only and to carry out the original intent of Congress" (H. Rept. No. 2198, *supra*, fn. 55, at p. 2). In that connection it should be noted that the Report (*ibid.*, p. 6) and the sponsors of the bill on the floor of the House (88 Cong. Rec. 5363–5366) freely refer to the transaction as a "guaranty".

The House passed H. R. 7164 (88 Cong. Rec. 5373) and sent it to the Senate. There, by amendment on

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H. W. Breining, a VA insurance official, stated that "under present construction of existing law" the insured would not be liable for defaulted premiums in excess of the cash surrender value of his policy (R. 79–80). This statement by Mr. Breining, a layman (R. 19), obviously had reference to the earlier informal and ambiguous replies made to certain inquiries by persons in the insurance field (*supra*, p. 62), which were interpreted by those persons as meaning that no liability would result. Actually, as we have already noted (*supra*, pp. 62–63), the Veterans' Administration never formally construed the 1940 law until March 1943 when *Administrator's Decision No. 513* was rendered (*ibid*).

[55] See Secs. 407 and 408, H. Rept. No. 2198, 77th Cong., 2d Sess., at p. 16. Significantly, the Committee Report's reference to these provisions explains that "A method is also prescribed whereby a person who has availed himself of the benefits of article IV may repay the premiums guaranteed by the Government over a period of 3 years subsequent to the period of military service, instead of within 1 year *as now provided*." (H. Rept. 2198, *supra*, at p. 6; emphasis added). See also 88 Cong. Rec. 5363–5369; R. 81–83.

the floor, the Senate struck all of the insurance provisions from the House bill and substituted the provisions of the bill (S. 1372, *supra*) previously proposed by the Veterans' Administration and enacted by the Senate. 88 Cong. Rec. 6705–6707.[56] Following this amendment and passage by the Senate, the bill was sent to conference. There, the Senate's version (which, in turn, was the Veterans' Administration's) of the amended insurance provisions was retained, some minor changes being made. See H. Rept. No. 2481, 77th Cong., 2d Sess., p. 6 (Conference Report).[57] The bill was thereafter enacted and became law on October 6, 1942 (56 Stat. 769, 773).

Apart from the clarifying language describing the transaction as one of guaranty by the United States, with the servicemen being expressly made liable for reimbursement, among the changes effected by the 1942 Amendment, were (1) the period of protection against lapse of policies was extended from one to two years following termination of military service;

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[56] Senator Johnson, the sponsor of the amendment, explained that "the purpose of the bill is *to make available additional and further relief and benefits* to persons in the military and naval forces, *and to clarify the original act*, which is known as the act of 1940. Most of the amendments are technical in nature. * * *." 88 Cong. Rec. 6707 (emphasis added).

[57] In reporting and explaining to the House the action of the Conference Committee, Representative Sparkman, a member of that Committee, stated with regard to the payment of defaulted premiums by the United States: "* * * Under the House bill nothing was said about these amounts being claims against the person in the armed forces after he got out of the service. The Senate [bill] provides that they shall be a claim against him and shall be collected against any amounts that may become due him by the United States. The House accepted the Senate provision." 88 Cong. Rec. 7545.

(2) the face value of policies protected was raised from 5 to 10 thousand dollars; (3) a beneficiary was given the right to apply for the Act's protection in case the insured was outside continental United States; and (4) the Amendment dropped the exclusion from the protection of the 1940 Act of policies as to which there was an outstanding loan equal to at least 50% of the cash surrender value of the policy. It was also provided (§ 408 (1), *infra*, p. 87) that the provisions of the 1940 Act should remain in force with respect to applications for protection executed prior to enactment of the amendment, and that policies covered by such applications should continue to be entitled to the protection of the original Act.[58] The Amendment provided further that insurers, whose policies were protected under the 1940 Act, could choose to settle their accounts with the United States under the much simpler method of the 1942 Amendment (§ 408 (2), *infra*, pp. 87–88).

The Amendment was not intended to and did not result in any substantial change in the scheme of insurance protection. As we have noted (*supra*, p. 66), the Senate Committee declared generally that the Amendment would *not* effect any substantial change in

[58] The 1940 Act had set up transactions essentially contractual in nature and presumably Congress had no intention to alter them. These provisions of § 408 (1) also eliminated the need for a person whose policy was already protected by the 1940 Act to file a new application, which would have resulted in confusion, in administrative work both by the Veterans' Administration and the insurers, and in other difficulties such as contacting servicemen located at different war fronts to advise them of the need for new applications, etc.

the basic purpose of the bill. That purpose, as the history of the 1918 and 1940 Acts demonstrates, was to suspend temporarily servicemen's obligations, not to discharge or to have the United States assume them. Nor did the 1942 Amendment result in any increase in respondents' liability. The insured's obligation to the Government was at all times the same as his obligation to the insurer. The additional year's protection of his policy was one of the liberalizing features of the 1942 law. Since all servicemen applying for protection after enactment of the Amendment were to receive protection during this enlarged period, the Veterans' Administration properly construed the Amendment as offering like protection to those who had applied under the original Act. Respondents were given full notice and could have discontinued that protection at any time (R. 288), but they did not do so.

Finally, there is additional evidence that Congress considered the 1940 Act, as originally enacted, as imposing a debt or obligation upon the insured to reimburse the Government for any amount expended in his behalf. The Act of April 3, 1948, 62 Stat. 160, amended Sec. 406 of the 1942 Amendment by adding these words (now in 50 U. S. C. App. 546):

> Any moneys received as repayment of *debts* incurred under this article [IV], *as originally enacted* and as amended, shall be credited to the appropriation for the payment of claims under this article. [Emphasis added.]

This explicit reference to the original 1940 Act shows that the Congress which passed the 1942 and 1948

Amendments did not believe that, in the respects pertinent to this case, they were changing the law.

### III. THE GOVERNMENT HAD THE RIGHT TO OFFSET RESPONDENTS' INDEBTEDNESS AGAINST THEIR NATIONAL SERVICE LIFE INSURANCE DIVIDENDS

Respondents argued below that, even if the Government is entitled to reimbursement, it is prohibited by 38 U. S. C. 454a (*infra*, p. 89) from offsetting their indebtedness under the Civil Relief Act against their National Service Life Insurance dividends. This argument has been so effectively disposed of by *Decisions of the Administrator of Veterans' Affairs, No. 742, supra* (R. 89–94), and by the trial judge's opinion following trial (R. 119–123), that little need be added.[59]

1. Unquestionably, the United States has the right, "which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him." *Gratiot* v. *United States*, 15 Pet. 336, 370; *United States* v. *Munsey Trust Co.*, 332 U. S. 234, 239; *McKnight* v. *United States*, 98 U. S. 179, 186. The rule may be overridden only when a statute unequivocally provides otherwise. § 454a does exempt certain veterans' benefits from set-off by the United States, but there is an exception to that exemption.[60] That exception, permitting the offset of "overpayments" made under laws relating to veterans, is applicable here, as its history reveals.

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[59] Having denied the right of reimbursement, the Court of Appeals did not find it necessary to reach this point.

[60] Section 454a bars "the collection by set off or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans * * * of any claim of the United States * * * against * * * any beneficiary * * * *except* amounts due the United States by such bene-

Congress has long been concerned with safeguarding the monetary benefits given to veterans against the claims of their creditors and third parties. For example, R. S. 4747 prohibited the attachment, levy or seizure of veterans' pensions; § 22 of the World War Veterans' Act, 43 Stat. 607, 613, prohibited the assignment of, and exempted from the claims of creditors, the compensation, insurance and maintenance and support allowances payable under that Act; and § 28 of the War Risk Insurance Act, as amended, 40 Stat. 609, had similar provisions. But these exemptions were construed as not preventing creditors from reaching these benefits when they were in the hands of some one other than the veteran himself; thus, collections of the veteran's indebtedness were made from payments due his widow or minor children, and the protection and immunity extended did not cover all benefits. Moreover, the exemptions were construed as not applicable to the United States even as to claims which had no relation to the veterans' benefits laws. In 1935, Congress repealed the earlier protective provisions and substituted a more uniform immunity. 49 Stat. 609; see H. Rept. No. 16, 74th Cong., 1st Sess., and S. Rept. No. 1072, 74th Cong., 1st Sess., p. 6. The 1935 Act provided that payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans shall be exempt from the claims of creditors, but that such provisions shall not attach to claims of the United States arising under such laws.

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ficiary * * * by reason of *overpayments* or illegal payments made under such laws relating to veterans, to such beneficiary * * *." [Emphasis added.]

While the 1935 Act precluded the United States from deducting from veterans' benefits an indebtedness arising under other laws and circumstances, as construed by the Comptroller General it did not prevent recovery of a veteran's indebtedness, arising under veterans' laws, from benefits payable to his dependents or beneficiary (thus permitting the recovery of one person's debt from benefits given to another), nor did it bar the collection of an unrelated debt of the beneficiary from the benefits otherwise payable to that beneficiary. See S. Rept. No. 2198, 76th Cong., 3d Sess., p. 6; H. Rept. No. 1814, 76th Cong., 3d Sess., p. 5. The exemption provision was amended in 1940 (54 Stat. 1195, now 38 U. S. C. 454a) so as to make it clear that any collection by the United States out of benefits flowing to an individual or to his estate should only be on account of that individual's own indebtedness. *Ibid.; Decisions of the Administrator of Veterans' Affairs, No. 742, supra.* The present law confines the Government's right of collection, by setoff or otherwise, out of benefits payable pursuant to a law administered by the Veterans' Administration to claims of the United States against the person or beneficiary who becomes indebted by reason of overpayments or illegal payments made to him or his dependents (as such) under laws relating to veterans (R. 90–91).

It has been the consistent administrative construction of this section that an "overpayment" includes anything of value which a veteran obtains under color of the laws relating to veterans, that "if the Government pays a veteran's obligation pursuant to law and

the veteran refuses to pay the debt therefrom arising, he is in a very real sense overpaid and there is an overpayment within the meaning of the exemption statute" (R. 122; *Administrator's Decision No. 742, supra; ibid., No. 607* (Nov. 24, 1944), Vol. 1, pp. 1097, 1101). The administrative construction is "not to be overturned unless clearly wrong" (*United States* v. *Citizens Loan & Trust Co.*, 316 U. S. 209, 214; *United States* v. *Jackson*, 280 U. S. 183, 193). Far from being wrong, the construction is both reasonable and equitable. It should be noted, moreover, that § 406 of the 1942 Amendment of the Civil Relief Act (described in Congress as a *clarifying* measure) provides specifically for offset. *Supra*, p. 65; *infra*, pp. 86–87. This is of particular significance since at the time the Civil Relief Act of 1940 was under consideration in Congress, the 1935 Act protecting servicemen's benefits from the claims of creditors (*supra*, p. 72) was still in force, and under its provisions, too, the United States would have been permitted to make the set-offs involved in this case.

2. Respondents argued below that insurance protection was neither a "payment" nor an "overpayment" to the insured, but that they were entitled to it as a matter of right. However, their application for protection was in effect a request that the Government guarantee payment of their premiums, and when the Government, pursuant to that guaranty, paid their defaulted premiums, such payment was made on their behalf and discharged their obligation to the insurer. It cannot be said, we believe, that payment to another under such circumstances was

not, to all intents and purposes, a payment to respondents. This was an "overpayment" even within the dictionary definition of the word, which respondents relied on below,[n] for the servicemen were entitled (as a matter of right) to a moratorium, but not to have the Government itself gratuitously assume and discharge their obligations; to obtain a gratuitous discharge of their indebtedness to the insurer would be to obtain compensation or reward "beyond deserts" (as the dictionary puts it).

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments of the court below should be reversed, and the judgment of the District Court should be reinstated.

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AUGUST 1956.

[n] Webster's New International Dictionary (2d ed.) defines "overpay" as follows: (verb) "to pay too much to or for; to more than pay; to compensate or reward beyond deserts." (noun) "Pay in excess."

# APPENDIX A

The Soldiers' and Sailors' Civil Relief Act of 1940 provides in pertinent part (54 Stat. 1178, 1179, 1183–1186; 50 U. S. C. App. (1940 Ed.) 510, 540–554):

## ARTICLE I

### GENERAL PROVISIONS

SEC. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

* * * * *

## ARTICLE IV

### INSURANCE

SEC. 400. In this article the term "policy shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association; the term "premium" shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited

shall refer to the date of admission to membership in such association; the term "insured" shall include any person who is the holder of a policy as defined in this article; the term "insurer" shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined in this article.

SEC. 401. (1) The benefits of this article shall apply to any person in military service who is the holder of a policy of life insurance, when such holder shall apply for such benefits on a form prepared in accordance with regulations which shall be prescribed by the Administrator of Veterans' Affairs. Such form shall set forth particularly that the application therein made is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article and by receiving and filing the same the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy on which the application is made is within the provisions of this article. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration.

(2) The Veterans' Administration shall issue through suitable military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article and shall furnish forms to be distributed to those desiring to make application for its benefits.

SEC. 402. The benefits of this Act shall be available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of $5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and

a premium was paid thereon before the date of approval of this Act or not less than thirty days before entry into the military service; but in no event shall the provisions of this article apply to any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than 50 per centum of the cash surrender value of the policy.

SEC. 403. The Veterans' Administration shall, subject to regulations, which shall be prescribed by the Administrator of Veterans' Affairs, compile and maintain a list of such persons in military service as have made application for the benefits of this article, and shall (1) reject any application for such benefits made by persons who are not persons in military service; (2) reject any applications for such benefits in excess of the amount permitted by section 402; and (3) reject any applications in respect of contracts of insurance otherwise not entitled to the benefits of this article. Said Administration shall immediately notify the insurer and the insured in writing of every rejection or approval.

SEC. 404. When one or more applications are made under this article by any one person in military service in respect of insurance exceeding a total face value of $5,000, whether on one or more policies or in one or more companies, and the insured shall not in his application indicate an order of preference, the Veterans' Administration shall reject such policies as have the inferior cash surrender value, so as to reduce the total benefits conferred within the face value of $5,000, and where necessary for this purpose shall direct the insurer to divide any policy into two separate policies. The said Administration shall

immediately notify the insurer and the insured in writing of such selection.

SEC. 405. No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of this article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period: *Provided*, That in no case shall this prohibition extend for more than one year after the date when this Act ceases to be in force.

SEC. 406. Within the first fifteen days of each calendar month after the date of approval of this Act until the expiration of one year after the date when this Act ceases to be in force every insurance corporation or association to which application has been made as herein provided, for the benefits of this article, shall render to the Veterans' Administration a report, duly verified, setting forth the following facts:

First. The names of the persons who have applied for such benefits, and the face value of the policies in respect of which such benefits have been applied for by such persons, during the preceding calendar month.

Second. A list as far as practicable of the premiums in respect of policies entitled to the benefits of this article, which remain unpaid on the last day of the preceding calendar month, which day is at least thirty-one days after the due date of the premiums, provided such premiums have not previously been so reported as in default.

Third. A list of premiums which, having been previously reported as in default, have been paid by the policyholder or someone on his behalf in whole or in part during the preceding calendar month.

Fourth. A computation of the difference between the total amount of defaulted premiums

therein reported and the total amount of premiums paid as therein reported, after having been previously reported as in default. From this sum shall be deducted the total sum of any premiums previously reported as in default, upon policies in respect of which the Veterans' Administration has, since the date of such report, rejected an application for the benefits of this article. The final sum so arrived at shall be denominated the monthly difference.

SEC. 407. The Administrator of Veterans' Affairs shall verify the computation of monthly difference reported by each insurer and shall, within ten days thereafter, deliver each month to the proper officer of such insurer, a certificate in the amount of the monthly difference certified in respect of each insurer. Such certificate shall be signed by said Administrator in the name of the United States, shall be in such form as the Administrator shall determine, shall be payable to the insurer within sixty days after the approval of the statement of account, as provided in section 411 hereof, and shall bear interest at a rate to be prescribed by the Secretary of the Treasury, payable with the principal. Such certificate shall not be transferred except with the approval of said Administrator and shall remain with the insurer until settlement is made in accordance with this article.

SEC. 408. The certificate so delivered shall be held by the respective insurers as security for the payment of the defaulted premiums with interest. To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien. Before any dividend is paid or any loan or settlement is

made the written consent of the Veterans' Administration must be obtained.

SEC. 409. In the event that the military service of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid.

SEC. 410. If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: *Provided*, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force.

SEC. 411. At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410, but not in any case a greater amount on any policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans.

SEC. 412. The balance in favor of the insurer in each case shall be certified by the Adminis-

trator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article.

SEC. 413. This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium.

SEC. 414. This article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service.

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## ARTICLE VI

## ADMINISTRATIVE REMEDIES

* * * * *

SEC. 604. This Act shall remain in force until May 15, 1945: *Provided,* That should the United States be then engaged in a war, this Act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter: * * *.

## APPENDIX B

The 1942 Amendment of the Soldiers' and Sailors' Civil Relief Act of 1940 provides in pertinent part (56 Stat. 769, 773–776; 50 U. S. C. App. 541–548):

SEC. 13. Article IV of such Act is amended to read as follows:

### ARTICLE IV

#### INSURANCE

* * * * *

SEC. 401. The benefits and privileges of this article shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article, unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the provisions of this article, and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total amount of insurance on the life of one insured under policies protected by the provisions of this article shall not exceed $10,000. If an insured makes application for protection of policies on

his life totaling insurance in excess of $10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article may be extended to include policies for a total amount of insurance not to exceed $10,000, and a policy which affords the best security to the Government shall be given preference.

SEC. 402. Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article, shall be sufficient as an application for the benefits of this article, but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this article and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article full force and effect with respect to such policy.

SEC. 403. The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest.

SEC. 404. No dividend or other monetary benefit under a policy shall be paid to an in-

sured or used to purchase dividend additions while a policy is protected by the provisions of this article except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article except upon approval by the Veterans' Administration. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article.

SEC. 405. In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article, the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act was issued. The amount deducted by reason of the protection afforded by this article shall be reported by the insurer to the Administrator of Veterans' Affairs.

SEC. 406. Payment of premiums and interest thereon at the rate specified in section 405 hereof becoming due on a policy while protected under the provisions of this article is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article, the amount then due shall be treated by the insurer as a policy loan

on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

SEC. 407. The Administrator of Veterans' Affairs is hereby authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article shall be final, and shall not be subject to review by any other official or agency of the Government. The Administrator of Veterans' Affairs shall report annually to the Congress on the administration of this article.

SEC. 408. (1) The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the ap-

proval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942, of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions.

## APPENDIX C

38 U. S. C. 454a provides:

§ 454a. *Assignability and exempt status of* payments of benefits.

Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.

From and after October 17, 1940, this section shall be construed to prohibit the collection by set-off or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (a) any person other than the indebted beneficiary of his estate; or (b) any beneficiary or his estate except amounts due the United States by such beneficiary or his estate by reason of overpayments or illegal payments made under such laws relating to veterans, to such beneficiary or his estate or to his dependents as such: *Provided, however,* That if the benefits be insurance payable by reason of yearly renewable term or of United States Government life (converted) insurance

issued by the United States, the exemption herein provided shall be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness be in the form of liens to secure unpaid premiums, or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits. *Provided further,* That nothing in this amendatory Act shall be construed to modify or repeal section 687b of this title.

# APPENDIX D

## THE SCHEME OF THE STATUTE

1. *The 1940 Act.*—The broad purpose of the Soldiers' and Sailors' Civil Relief Act of 1940[1] was to protect servicemen from harassment and injury in connection with their civilian affairs during their period in uniform. Congress recognized that, because of their reduced income and absence from civilian life, servicemen might be unable to meet the financial obligations they had incurred before being called into military service. To free them from worry about these matters so that they could then devote their entire energies to the military needs of the Nation, the Act provides for "the temporary suspension" of the enforcement of specified civil liabilities of servicemen.[2] It does not wipe out those liabilities; it simply defers or suspends them so that the serviceman "might have an opportunity when he returns to be heard and to take measures to protect his interests."[3] The Act confers wide discretionary powers upon the courts to

[1] The 1940 Act was virtually a reenactment of the Soldiers' and Sailors' Civil Relief Act of 1918, 40 Stat. 440, 441, enacted during World War I. See *supra*, pp. 51, 58–59.

[2] § 100, *supra*, p. 77; see also H. Rept. No. 3001, 76th Cong., 3d Sess., p. 2 (1940); H. Rept. No. 181, 65th Cong., 1st Sess., p. 3 (1917) (reporting on the bill which later became the Soldiers' and Sailors' Civil Relief Act of 1918).

[3] H. Rept. No. 3001, *supra*.

grant stays in proceedings and transactions involving servicemen; it virtually bars default judgments against them; it tolls statutes of limitations; it defers tax obligations; and it has specific provisions to safeguard servicemen with regard to contracts which impose a continuing liability, such as leases, mortgages, installment purchases, etc.

Insurance contracts were regarded as being in the latter category.[4] Congress recognized that, due to the exigencies of the service, persons who held private life insurance policies before entering the armed forces might not be able to make remittances for premium payments within the time required by policy provisions. Failure to pay these premiums almost invariably would result in the lapse or forfeiture of their policies.[5] To avoid such forfeiture or lapse, the Act provided that, on application of a serviceman, the United States would guarantee the payment of his premiums during the period of his military service and for one year thereafter.[6] This, in brief, was the scheme of Article IV of the Act which related to insurance:

The protection of the Act was available only to those servicemen who filed an application both with their insurer and with the Veterans' Administration (§ 401, *supra*, p. 78). The application form required the serviceman to state specifically that the applica-

[4] See *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d Sess., on S. 2859 and H. R. 6361*, pp. 27–28.

[5] *Ibid.*, p. 104.

[6] That the transaction contemplated by the Act was one of guaranty is discussed at length above, see p. 25 *et seq.*, and see *infra*, p. 103 *et seq.*

tion "is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article" (*ibid.*).[7] Upon receipt of the application, the insurer filed a report on the insurance policy with the Veterans' Administration, 38 C. F. R. (1941 Supp.) 10.3300, 10.3301.[8] By receiving and filing the application, the insurer also was deemed to have consented to any necessary modification of the policy (§ 401). The Veterans' Administration then determined whether the insured and his policy were eligible for protection under the Act, and promptly notified the insured and his insurer of its approval or rejection of the application. The protection afforded was limited to certain types of life insurance policies not exceeding $5,000 in face amount. §§ 402–404, *supra*, pp. 78–79.

The Act provided that no policy thus brought within the benefits of the Act should lapse or be forfeited for nonpayment of premiums during the insured's period of military service and for one year thereafter. § 405, *supra*, p. 80. It further provided for a monthly report by the insurer to the Government. § 406, *supra*, p. 80. Each month, every insurance company with policies under the Act's protection was to send a report to the Veterans' Administration listing, *inter alia*, the premiums defaulted during the past month, the payments of premiums which pre-

[7] The application form is set forth in 38 C. F. R. (1941 Supp.) 10.3300, and a copy of respondent Plesha's application is reprinted in the record at 291–293.

[8] The insurer's report concerning Plesha's policy appears at R. 294–296.

viously had been reported as in default, and a computation of the difference between the two total amounts. *Ibid.* Every month, after verifying the amount of this "monthly difference," the Veterans' Administration was to deliver to the insurer a certificate in the amount of the monthly difference. The certificates were to bear interest at a rate to be prescribed by the Secretary of the Treasury [9] and were to be kept by the insurance company until its ultimate settlement of account with the United States. § 407, *supra,* p. 81.

The certificates were to be held by the insurance companies "as security for the payment of the defaulted premiums with interest." And, "to indemnify it against loss", the United States was to have a first lien upon each protected policy. The insurer was forbidden from making any loan or settlement or payment of dividend on the protected policy which might prejudice the lien, and none in any event without obtaining the written consent of the Veterans' Administration. § 408, *supra,* pp. 81–82.

If the insured died while his policy was under protection, the previously defaulted premiums, plus interest at the rate provided for in the policy for policy loans, were to be deducted from the proceeds of the policy. This deduction was to be credited to the Government in the next monthly report, as premiums paid. § 409, *supra,* p. 82.

If the insured did not, within one year after the termination of his military service, pay to his insur-

[9] The Secretary fixed the rate of interest at 3% per annum, not compounded. R. 136; 38 C. F. R. (1941 Supp.) 10.3312.

ance company all past due premiums with interest at the policy loan rate, his policy was then to lapse. In that event, the insurer was to become liable to pay the cash surrender value of the policy. § 410, *supra*, p. 82; but cf. § 408, *supra*.

One year after the Act ceased to be in force, there was to be a final accounting between each insurer and the United States.[10] In that account the United States was to be credited with the sum of the cash surrender value of each lapsed policy up to the amount of the unpaid premiums with interest at the policy loan rate, and the insurer was to be credited with the total amount of its certificates with interest to the date of the account. The balance in favor of the insurer was to be paid by the United States. §§ 411, 412, *supra*, pp. 82–83.

It should be noted that in each instance in which the Act spoke specifically of the payment of past due premiums by the insured, the obligation contemplated was for the amount of his past due premiums plus interest at the rate provided for in his policy for policy loans. Thus, if he died, the defaulted premiums, with interest at the policy loan rate, were deducted from the proceeds (§ 409); if he wanted to avoid lapse of his policy after his service ended, he had to pay his insurer all past due premiums with interest at the policy loan rate (§ 410); if he failed to make such payment, the cash surrender value, up to the amount

[10] The Act was to remain in force until May 15, 1945, but if the United States was then engaged in war the Act was to remain in force until six months after the termination of the war by a treaty of peace. § 604, *supra*, p. 83.

of the past due premiums with interest at the policy loan rate, was credited to the United States in settling the guaranty account with the insurer (§ 411). If the cash surrender value exceeded the sum owed by the insured, the insurer presumably was bound to pay this excess to the insured, although there is no explicit language in the Act so stating (§§ 410, 411).

The 1940 Act contained no express provision that, if the payment by the United States of the defaulted premiums pursuant to its guaranty should exceed the cash surrender value, the insured was obligated to reimburse the United States for this deficiency. On the other hand, neither did the Act state that the insured was not under such an obligation, nor was there any declaration that the payment by the United States should constitute a gratuity to the insured.

2. *The 1942 Amendment.*—In 1942, Congress removed all doubt as to the nature of the Government's payments by an amendment of Article IV [11] which stated explicitly that the unpaid premiums, with interest at the policy loan rate, were being guaranteed by the United States, and that

> The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

[11] 56 Stat. 775, Sec. 406; 50 U. S. C. App. 546; *supra*, pp. 86–87.

This was one of several revisions enacted by the 1942 Amendment, all of which were said to be "for the purpose of clarification" and to "liberalize the existing law".[12] See, for fuller discussion, *supra,* pp. 63–71.

Among other things, the 1942 Amendment discarded the cumbersome "monthly difference" reporting system and the deferred settlement of account required of the insurer under the 1940 Act (see *supra,* pp. 93–94). Instead, it provided for the United States to pay the insurance company the difference between (a) the cash surrender value, and (b) the amount of the defaulted premiums plus interest at the policy loan rate; payment was made on a per policy basis when the policy lapsed. § 406, as amended, *supra,* pp. 86–87. As to policies already protected under the 1940 Act, the company could elect to settle under the simpler method of the 1942 Amendment; if it failed so to elect within 90 days after enactment of the Amendment, the old method of settlement was retained. § 408 (2), as amended, *supra,* pp. 87–88. In this case, respondents' insurer made that election and settled on a per policy basis under the new method (*supra,* p. 5).[13]

The Amendment declared that policies already protected under the 1940 Act should continue to be entitled to the protection that Act granted and that the provisions of the earlier Act should remain in force as to such policies. § 408 (1), as amended, *supra,*

[12] S. Rept. No. 716, 77th Cong., 1st Sess., p. 3; 88 Cong. Rec. 6707.

[13] We are informed by the Veterans' Administration that almost all insurers similarly elected to settle under the method provided by the Amendment.

p. 87. The Amendment conferred additional benefits (see *supra,* pp. 68–69) and also enlarged the period of protection against lapse, from one year following termination of the insured's military service to two years afterward. § 403, as amended, *supra,* p. 85.

# APPENDIX E

## The Legislative History of the 1918 Act

1. The original draft of the 1918 Act was prepared by the War Department under the supervision of eminent attorneys headed by Dean John H. Wigmore, then serving as an officer in the Office of the Judge Advocate General. As stated in the letter of transmittal to the Congress from the Secretaries of War and of the Navy, the bill was intended "to free persons in the military service of the United States from harassment and injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of the Nation."[1] During the hearings on the bill it was emphasized that this objective was to be achieved *not* through a gratuitous discharge of civil liabilities, but rather by providing a temporary suspension of remedies which, if enforced against servicemen while they were away, might prejudice their civilian affairs. The method of the bill was to preserve creditors' rights but to suspend or postpone proceedings and transactions during the soldier's or sailor's absence, "so that he may have an opportunity, when he returns, to be heard and to take measures to protect

[1] *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2nd Sess., on S. 2859 and H. R. 6361*, p. 5.

his interests."[2] In general, the bill placed broad discretionary powers in the courts to stay proceedings and transactions involving servicemen. Covering a variety of subjects (*e. g.*, default judgments, statutes of limitations, tax obligations, etc.), the bill also contained provisions to afford protection to servicemen on "contracts which impose a continuing liability upon a soldier or sailor during his term of service. These include such contracts as those for policies of insurance, rent for dwellings, interest on mortgages * * *, and purchase of real or personal property by installment contracts calling for the payment of installments during the period of military service" (*Hearings, supra,* fn. 1, at p. 27). See *supra,* pp. 17–20, 91–92.

[2] *Hearings, supra,* fn. 1. Introduced in the Senate as S. 2859 on September 11, 1917, and in the House as H. R. 6110 one week later, the bills were referred to the respective Committees on the Judiciary. Testifying before the Senate Committee, Dean Wigmore stated as to the original draft: "In every one of the 8 or 10 measures calculated to relieve a specific need of the soldier or sailor * * * we stopped at suspending the remedy. In no instance, so far as I in good faith can say, is any man's rights or property taken from him, lost, or destroyed. He is simply held back for a time in his remedy. There is a soldier going to war. The creditor comes in and we say, 'Hold on, hold back. That man is away in the Army. He is fighting for you. Wait until he comes back. Do not jump on him while he is away. You will have every remedy back in your hands the minute that he is returned and has gotten himself together and got his uniform off.' * * * The whole theory is simply to hold the hand. Throughout the bill, so far as I am able to see it, there is nothing more done than suspension of remedy." *Ibid.*, p. 87. See also, *Hearings before the Committee on the Judiciary, H. of Rep., 65th Cong., 1st sess., on H. R. 6110,* at pp. 5–7.

As to life insurance, the proposed law originally prohibited the forfeiture or lapse of certain private policies held by servicemen for nonpayment of premiums falling due during their period of military service. It provided that such defaulted premiums should be charged to the policy as a loan and could be paid by the insured with interest at the policy loan rate at any time within six months after the termination of the insured's military service.[3] Spokesmen for the insurance industry appeared before the Senate Committee considering the bill and vigorously objected to this feature of the bill. They asserted that it would compel the insurance companies to maintain policies in force despite nonpayment of premiums, contrary to the terms of the insurance contract; that in reality the serviceman was being given an option to pay or not to pay his defaulted premiums, as he saw fit, upon his return from war, because the bill failed to provide a consensual and enforcible obligation with reference to premiums accruing in the future; in other words, there would be no debt running from the insured to the insurer.[4]

[3] § 13 of S. 2859, 65th Cong., 1st Sess.; *Hearings*, *supra*, fn. 1, at pp. 18–21, 31. That the bill did not contemplate the furnishing of free insurance is indicated by the fact that the section also suggested machinery under which the beneficiaries of servicemen whose premiums were in default could contact relief organizations who would render assistance in payment: *Ibid.* Dean Wigmore testified that the insurance provisions did not provide for paying the premiums but only for giving notice of default to such organizations which would then assist in making payments. See *Hearings before the Committee on the Judiciary, H. of Rep., 65th Cong., 1st Sess., on H. R. 6110*, p. 9.

[4] They explained that under the usual contract of insurance both parties agree that the premium paid shall keep the policy

Discussion at the Senate hearings indicated a common desire by members of the Committee to afford protection of some kind with regard to servicemen's outstanding private insurance but strong opposition to providing free insurance or to forcing the companies to maintain the policies while the serviceman would have an election to pay or not to pay his defaulted premiums upon his return to civilian life. Senator Reed, one of the most active participants at the Senate Committee hearings, declared that it was "absurd" to propose that "at the end of the war the soldier shall have the option to pay or not to pay, as he sees fit. * * * I did not think it would be claimed that a thing of that kind could be done." *Hearings, supra*, fn. 1, at p. 114.[5] Finally, after considerable discussion, Dean Wigmore suggested that these objections could be eliminated by modifying the bill so as to provide for a *guaranty* by the Government that the premiums would be paid. The Committee welcomed this suggestion and directed that he sit down

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in force only until the date on which the next premium becomes due; the policyholder is not under any obligation to pay the succeeding premium; if he chooses to pay, the insurance contract remains in force until the subsequent premium becomes due, but if he chooses not to pay, the contract terminates. If the company nevertheless continued to extend insurance coverage as the bill required it to do, it was feared that the company would have no legally enforcible claim against him for future premiums because the policyholder had never requested or agreed to renewal of his contract. *Hearings, supra*, fn. 1, at p. 102 *et seq.*

[5] It should be noted that this is precisely the result which is reached by the decision below: the insured has been held to have an option to pay or not to pay his defaulted premiums as he pleases.

with industry representatives and draft such a provision.[6]

2. Three days later, after having worked with the company representatives, Dean Wigmore reappeared before the Committee with a draft of a separate act entitled "A Bill to provide a mode of *guaranty* against lapse or forfeiture of life insurance policies held by persons in military service."[7] Its provisions (which, with minor changes, were later enacted as Article IV of the 1918 Act and ultimately were incorporated in the 1940 Act) were substantially different from those proposed in the original bill. The latter had merely placed a flat prohibition on lapse of policies for nonpayment of premiums; the arrangement was nonconsensual and therefore, as the industry had argued, offered no assurance to the com-

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[6] "Maj. WIGMORE. * * * I am sure I do not want the Government to pay my insurance premiums, and there must be thousands like that who do not want any favors or charities in that way. If the suspension of these forfeitures, from the point of view of Mr. McIntosh [a spokesman on behalf of the insurance companies], will impose an undue burden on the companies, why can you not get at it in that way by simply, through an act of Congress, guaranteeing them against losses? Then all of us who go on paying our policies are taken care of in their own way, and those of us who have, by inadvertence, not paid our premiums, would be taken care of, and thus not throw an undue burden on them.

"Senator FLETCHER. That is a sound suggestion.

"Maj. WIGMORE. There is no constitutional objection to that.

"Senator OVERMAN. Suppose you draw up such an amendment as that.

"Senator REED. That is a practical suggestion. Sit down with these gentlemen representing the companies and agree on a section that will carry out this suggestion." *Hearings*, *supra*, fn. 1, at p. 120.

[7] Emphasis added. The full text of the draft bill is set out at *Hearings*, *supra*, fn. 1, at pp. 124–131.

panies that they would ever receive or even have the right to enforce the payment of premiums for the period during which the proposed law required that they keep the policies in force. The new bill, however, not only provided for a consensual arrangement, thereby furnishing a foundation for a legal claim by the insurance company against the insured for payment of defaulted premiums, but also established a firm guaranty by the Government that these premiums would be paid.[8] The scheme of the bill is virtually that of the 1940 Act, already described, Appendix D, *supra*, p. 91, *et seq.*[9]

3. The revised insurance provisions were considered at subsequent hearings. *Hearings, supra,* fn. 1, at p. 123 *et seq.* Dean Wigmore testified that the new proposal met the objections of the industry. *Ibid.*

[8] The voluntary and consensual arrangement between the insured and the insurer is evidenced by the fact that the protection against lapse was to be available only if the insured requested it by making application for such protection *to his insurance company.* The application constituted the insured's consent to such modification of the contract "as is made necessary by the provisions of the Act." By receiving and filing the application, the insurer similarly consented to any necessary modification of the contract. The original application had to be sent to the insurer, and a copy to the Bureau of War Risk Insurance (the Veterans' Administration under the 1940 Act). See *supra*, p. 92 *et seq.* The law did not compel the serviceman to keep his private insurance in force; nor is there anything to indicate that the insurance company was compelled to keep the policy alive even after the serviceman had elected to do so by the filing of his application. Only when both parties to the contract agreed did the insurance policy remain in force.

[9] Under §§ 408–409 of the 1918 Act, bonds, rather than certificates as provided in §§ 407–408 of the 1940 Act, were delivered to the insurer by the United States "as security for the payment of the defaulted premiums with interest."

at p. 132. He agreed with Senator Overman's interpretation that under the new proposal the serviceman would be subject to a debt, for he would owe the premiums to the insurance company,[10] and that if he failed to pay that debt, the Government would (*id.* at p. 134). Questioned as to whether the Government could obtain repayment from the serviceman, Dean Wigmore answered affirmatively and went on to explain that in his belief the cash surrender value of the policy, which was subject to the Government's lien, would in most instances be sufficient to recoup the expenditure.[11] *Id.*, at 135. He was not asked specifically and therefore furnished no direct answer to whether, in his view, the Government would be denied the right of recourse against the servicemen for any deficiency. On the other hand, he had stressed earlier that the whole approach in writing the original bill was merely to suspend remedies for a temporary period, not to deprive any creditor of his rights or to relieve any debtor of his obligations.

[10] Compare the industry's objections to the original bill which failed to provide an enforcible obligation of the insured, *supra*, pp. 101–103.

[11] Under the new bill drafted by Dean Wigmore and the industry's representatives, insurance contracts were not eligible for the Act's protection unless they "were made and *two full years' premiums* were paid thereon before September 1, 1917" (*Hearings*, *supra*, fn. 1, at p. 126; emphasis added). As enacted, however, the 1918 Act limited eligibility to contracts made and on which a premium was paid before September 1, 1917; since the bill was enacted March 8, 1918, this meant the policy had to be approximately six months old. 40 Stat. 440. And this requirement was further reduced under the 1940 Act which permitted protection when the contract was "made and a premium was paid thereon before the date of approval of this Act or not less than thirty days before entry into the military service." § 402, *supra*, pp. 78–79.

See pp. 99–100 and fn. 2, *supra*. The revised insurance provisions did not change that approach; they were designed to strengthen it. Their purpose was to meet the problem of insurance contracts by creating a debt enforcible against the policyholder for the unpaid premiums, and, through the Government's guaranty, assuring payment of that debt.

Meanwhile, apart from the insurance provisions of the Civil Relief Bill initially submitted to the Congress, the House Committee found it desirable to make certain other changes. As a result, the bill was rewritten and the revised version was introduced as a new measure (H. R. 6361, 65th Cong., 1st Sess.). The separate insurance bill, which Dean Wigmore and the industry spokesmen had worked out to effectuate a governmental guaranty of payment of defaulted premiums, was, with only slight change, included as Article IV of this new bill.

Reporting the bill favorably, the House Committee on the Judiciary described the insurance Article as providing "a scheme for the Government to carry the premiums on not more than $5,000 of life insurance of a man in military service who is unable to pay this premium." H. Rept. No. 181, 65th Cong., 1st Sess., p. 7. While the Report has no specific reference to the question of whether the serviceman will be obligated to reimburse the Government if it is called upon to pay his defaulted premiums, there are a number of indirect indications that a debt rather than a gratuity was contemplated. Thus, the Report distinguishes between the "boon" or gratuity provided under the war-risk (governmental) insurance bill

and the instant arrangement.[12] The voluntary and contractual nature of the transaction contemplated by the bill was also a subject of comment.[13] In numerous places the relationship of the Government to the transaction was specifically termed a "guaranty."[14]

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[12] "The insurance provisions of the bill cover an entirely separate field from the insurance provisions of the war-risk insurance bill. That bill gives new insurance to soldiers and sailors *as a boon from the Government;* this section protects rights in insurance previously bought by the soldier or sailor with his own money and already in force." H. Rept. No. 181, *supra*, at p. 7 (emphasis added). And see the earlier remarks of Senator Reed (*supra*, p. 100) that it would be absurd to give the soldier an option to pay or not pay, as he sees fit. Cf. fn. 5, at p. 102, and pp. 35–36, *supra*.

[13] "This change in the original contract of insurance is agreed to by requiring the soldier who wishes to take advantage of the bill to make an application, signed by the beneficiary when legally necessary: When the application is filed by the company, it also accepts the change in the contract." H. Rept. No. 181, *supra*, at p. 7.

[14] The report speaks of the soldier obtaining a "Government *guaranty* upon an aggregate of [not] more than $5,000 of insurance" (*ibid.*, p. 7); and states that the "*guaranty* continues as to all premiums on accepted policies until a year after the war * * *" (*ibid.*, p. 8). Speaking of the likelihood that the Government's financial burden will not be large, the report states, "In the first place the Government only *guarantees* the payment of the premiums. If the soldier dies the insurance company will get its premiums out of the policy and the Government's *guaranty* will not be called upon. If the soldier comes back from the war he will repay the premiums if he continues the policy, and if he lets the policy lapse the Government will be subrogated to his rights. * * * In the nature of things it is impossible to say what the amount of this liability will be. But it is plain that it will be very small, especially when we remember that the *guaranty* does not apply to more than $5,000 of insurance on any one life." *Ibid.*, pp. 8–9. (Emphasis added.)

With but minor changes,[15] the bill was passed by both houses of the Congress and was enacted into law on March 8, 1918, 40 Stat. 440.

[15] See H. Rept. No. 344 (Conference Report to accompany H. R. 6361), 65th Cong., 2d Sess.

## APPENDIX F

The following is an extract from the Congressional Record (86 Cong. Rec. pp. 13132–13133) concerning the bill which became the Soldiers' and Sailors' Relief Act of 1940. The bill (H. R. 10338) having been read to the House, this discussion took place (emphasis added):

> Mr. VOORHIS of California:
>
> Mr. Speaker, * * * it seems to me that this bill ought to be as thoroughly understood as possible.
>
> I do not propose to make an oration here, but I do propose to try to interpret the bill as I understand it, with the request that I be corrected as I go along.
>
> I am afraid there are many Members of the House and there may be men who are going to be affected by the terms of this bill who are not going to understand what we are doing.
>
> As I understand what this bill provides, it is roughly the following: It says that if a person who is drafted into the service of the country under the terms of legislation recently passed, is renting a home or purchasing a home or has some other contract on which he is liable to make payments, then he shall not be dispossessed or his family shall not be evicted or no action of that sort shall be taken without court permission during the time he is in the service or for 3 months thereafter. *I do not understand, however, that his payments are in any way forgiven to him, or anything like that. He is still liable to make the same payments at some future time as he would have to make under these circumstances.* The only thing that happens is that his family cannot be evicted

or the property cannot be taken away from him, which he is in the process of purchasing.

*In the case of insurance I understand that the Government guarantees the difference between the amount of premium that the man can pay and the full amount of the premium, but that the man must repay the Government for the amount that the Government pays on his behalf during this period, at some future time.* * * * If I am wrong about any of these remarks, I want to be corrected now. I am only a layman. I am not a lawyer and I have not been on the committee, but I just made these remarks because I think it is a very important bill to many thousands of people and that Members of Congress ought to consider it carefully and that we ought to be clear in our minds as to what we are doing.

Mr. VAN ZANDT. Mr. Speaker, will the gentleman yield?

Mr. VOORHIS of California. I yield.

Mr. VAN ZANDT. Did I understand the gentleman to say that where a person has an insurance policy and is unable to meet the payments, the Government will assume that responsibility?

Mr. VOORHIS of California. Perhaps the chairman of the committee had better answer it, but my understanding is that the Government pays the difference between the amount a man is considered able to pay and the full amount of the premium, while he is in the service.

Mr. ARENDS. Will the gentleman yield?

Mr. VOORHIS of California. I yield.

Mr. ARENDS. The gentleman is correct. However, he will be issued a certificate and *he will have to pay this back.* In other words, the Government will have a lien against this man's insurance policy *until such time as the owner of the insurance policy reimburses the Government.*

Mr. VOORHIS of California. And how long does he have to pay it back? A year?

Mr. ARENDS. A year after he is out of service.

Mr. VOORHIS of California. *And during that year he must repay the Government what it has paid on his policy?*

Mr. ARENDS. *That is correct.*

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1955

No. ~~718~~ 39

UNITED STATES OF AMERICA,
*Petitioner,*

vs.

PAUL E. PLESHA, JAMES E. MABBUTT and MYRON L. KERN,
*Respondents.*

## MEMORANDUM OF NON-OPPOSITION TO GRANTING OF WRIT OF CERTIORARI.

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1955

No. 718

UNITED STATES OF AMERICA,
*Petitioner,*

vs.

PAUL E. PLESHA, JAMES E. MABBUTT and MYRON L. KERN,
*Respondents.*

## MEMORANDUM OF NON-OPPOSITION TO GRANTING OF WRIT OF CERTIORARI.

Respondents do not oppose the granting of the Petition for a Writ of Certiorari filed herein by the Solicitor General of the United States.

If the Writ be granted, respondents will file a brief on the merits in which they will dispute and answer the points made by the Solicitor General's petition concerning the merits of this controversy, and in which they will endeavor to demonstrate that the de-

cision of the Court of Appeals for the Ninth Circuit in this case was correct, and that of the Court of Appeals for the Tenth Circuit in *United States v. Hendler,* 225 F. 2d 106, is not correct.

So that silence concerning the issues here involved shall not have the effect of limiting the issues to those indicated in the Solicitor General's petition, it is desired to state that as we see them the issues are as follows:

1. Does the Court have jurisdiction?

2. As stated by the trial Court: "The central question in this litigation is whether the Relief Act of 1940, as originally enacted, imposed on service men who put their private life insurance policies under the protection of that Act, a liability to repay the defendant for whatever the latter might have to disburse to the insurance companies under that statute." (123 F. Supp. at 596.)

3. If such a liability was imposed, what was the measure of that liability: To reimburse the United States for the amount it would have paid on account of the protection of the particular policy if the United States had settled with the insurance company in accordance with the terms of the 1940 Act; or to repay the greater amount which the Government actually paid the company in accordance with the terms of the 1942 amendments?

4. Did the 1942 amendments to said Act extend the period of protection of policies placed under protection before the enactment of such amendments?

5. Assuming that the 1940 Act imposed on each appellant the obligation to reimburse the Government for the amount which it might pay on account of the protection of his policy in accordance with the terms of that Act, could the 1942 Congress, without violating the Fifth Amendment to the Constitution of the United States, increase the burden of that obligation without his consent by increasing the amount which the Government would pay to the insurance company and requiring him to reimburse the Government for such larger payment?

6. Was the United States entitled to collect, by way of offset against appellants' National Service Life Insurance dividends, the amounts it did deduct from such dividends?

The above statement of issues is taken verbatim from our opening brief before the Court of Appeals.

It appears from the Solicitor General's petition that he is now abandoning the claim that the trial Court did not have jurisdiction.

Dated, Sacramento, California,
March 21, 1956.

Respectfully submitted,

PHILIP C. WILKINS,
*Attorney for Respondents.*

LAWRENCE A. SCHEI,
*Of Counsel.*

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1956

**No. 39**

UNITED STATES OF AMERICA,
*Petitioner,*

vs.

PAUL E. PLESHA, JAMES E. MABBUTT and MYRON L. KERN,
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

## RESPONDENTS' BRIEF.

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*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

## RESPONDENTS' BRIEF.

### I. JURISDICTION.

Jurisdiction also rests on 38 U.S.C. Section 817. This section and pertinent portions of 38 U.S.C. Section 445 to which it refers are set forth in Appendix A.

## II. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The Fifth Amendment to the Constitution of the United States is set forth in Appendix B.

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## III. QUESTIONS PRESENTED.

As indicated in our Memorandum of Non-Opposition to Granting of Writ of Certiorari heretofore filed herein, we believe that this case presents the following questions in addition to the one stated at page 2 of the Government's Brief:

1. If the Civil Relief Act imposed an obligation to reimburse, what was the measure of that liability: To reimburse the United States for the amount it would have paid on account of the protection of the particular policy if the United States had settled with the insurance company in accordance with the terms of the 1940 Act; or to repay the greater amount which the Government actually paid the company in accordance with the terms of the 1942 amendments?

2. Did the 1942 amendments to said Act extend the period of protection of policies placed under protection before the enactment of such amendments?

3. Assuming that the 1940 Act imposed on each respondent the obligation to reimburse the Government for the amount which it might pay on account of the protection of his policy in accordance with the terms of that Act, could the 1942 Congress, without violating the Fifth Amendment to the Constitution of the United States, increase the burden of that obli-

gation without his consent by increasing the amount which the Government would pay to the insurance company and requiring him to reimburse the Government for such larger payment?

4. Was the United States entitled to collect, by way of offset against respondents' National Service Life Insurance dividends, the amounts it did deduct from such dividends?

---

## IV. STATEMENT OF FACTS.

Facts not mentioned in the Government's Statement (Br. pp. 2-7) include the following:

After respondents' policies were placed under protection the insurance company reported to the United States, as they became past due, the premiums on each protected policy. These reports were made on so-called "Monthly Difference Reports", following receipt of which the United States issued interest-bearing certificates to the company promising payment of the "difference" shown on such reports. (Testimony of Glenn E. Drummond, R. 186-196, 234-236; Pl. Ex. 6 and 13, R. 125, 196, 235, 261-267, 274.)

Following amendment of Article IV in 1942 (Public Law 732, 77th Congress, 56 Stat. 773-776, effective October 6, 1942) the insurance company, as was its right under Section 408(2) (50 U.S.C. App. Section 548(2)) of such amendments, elected to give up the certificates which had been issued to it, and the "Monthly Difference" reporting system, and to accept

in lieu thereof the method of settlement and the guarantee of premiums prescribed by such amendments. (R. 196-197; Finding 20, R. 135.)

Respondents were not consulted concerning such election, nor were they then advised of it, nor did they then consent to any change in the relationship between themselves, the company and the United States. (Request for Admissions 4 and 5 and Replies thereto, R. 35-36, 38; Finding 27, R. 137.)

After receipt of the form letter FL 9-63 mentioned by the Government (Br. p. 4), respondent Mabbutt wrote to the Veterans Administration requesting termination of protection and this was accomplished some 14 months after his separation. (Answer R. 107; Finding 9, R. 130.)

Respondent Mabbutt made no partial payment to the United States. (Answer, R. 108; Finding 10, R. 130-131.)

---

## V. SUMMARY OF ARGUMENT.

Examination and analysis of the Soldiers' and Sailors' Civil Relief Act of 1940 shows that it was intended to permit men entering the service to maintain life insurance for their dependents despite the reduction in their income consequent upon induction or enlistment. Upon application by the servicemen, provided only that his policy met the statutory requirements, the insurance company was forbidden to lapse or forfeit the policy; and the Government agreed

to pay the premiums if the insured did not do so within one year after separation from service. The Act contains no requirement that the insured reimburse the Government for moneys which it might be called upon to pay the insurance company; it does give the Government a lien on values inhering in the policy, treating the accruing premiums as a policy loan on the sole security of the policy. This is the limit of the Government's rights.

A. Not only does the Act contain no language requiring the insured to reimburse the Government, there is no machinery to effectuate payment from the insureds, no word about time, manner or amount of payment. In significant contrast, the Act contains detailed provisions for the determination and settling of accounts between Government and insurer. The mechanics of this accounting system were such that items concerning individual policies were submerged in a group account, and, because the credits in the Government's favor could and often did exceed the charges with regard to particular policies, it would have been very difficult to find *any* formula which would establish how much of the Government's payment on final settlement should be charged to each insured who had let his policy lapse; much less to find a *fair* formula for doing so. The statutory scheme confirms, in detail after detail, the Congressional purpose to give the Government the limited security available in policy values, and no more.

B. The amendments to the Act in 1942 gave the insurer the right to settle with the Government in

individual cases, and on a basis which substantially increased the amount which would be received for the Government on account of lapsed policies. By express provision new applicants were to be indebted to the United States for payments made on account of these policies, but this provision did not apply to those already protected.

C. A guarantor is not entitled to more than full reimbursement. By taking from respondents' dividends the amount which it paid the insurer under the 1942 settlement formula, an amount substantially larger than the 1940 formula would have produced, the Government has claimed and taken more than the maximum it can claim under its implied obligation theory. The several unsuccessful attempts of the Government to explain the embarrassing disparity between its claim and what its theory could support emphasize the importance of this disparity.

D. and E. The legislative history and administrative construction confirm respondents' position that the Act imposed no liability to reimburse.

F. As a matter of contract, the Government's rights are limited to a lien on policy values. The contract documents, all prepared by the Government, define and delimit the Government's rights and the serviceman's obligation. A liability to reimburse cannot be implied out of these documents without departing from the objective test of mutual assent, and ignoring the rules which require interpretation of doubtful language against the draftsman. Further

the Government's conduct in the premises has been such as to estop it from asserting this liability.

G. The various considerations of policy which are involved here are properly for Congress, not the Courts; and where Congress has not taken a position the Courts should not imply a liability.

H. In addition this Act should be liberally construed to benefit the serviceman.

I. Interpreted as Government would have it, the increase in liability imposed by the 1942 amendments increases the burdens of the contract, taking respondents' property without due process and without compensation contrary to the Fifth Amendment. Such an intention should not be ascribed to Congress.

J. One who asserts an offset has the burden of proving he is entitled thereto. The Government has offered no proof at all to show what respondents' liability would be under the 1940 provisions, the only provisions under which they *could* be held.

K. The Government's argument that it has the rights of a common law guarantor rests on unsound premises. Further under the circumstances of this case its conclusion would not follow even if its premises were established; the theory cannot be reconciled with the provisions of the Act.

L. There is nothing unusual or improper about conferring a benefit upon military personnel or their dependents. In cases where a need for insurance protection of dependents had been established prior to

entry into service by the purchase of commercial life insurance, the very low pay of enlisted men in lower grades in 1940 and the absence of any allowance for their dependents justified and required the preservation of that insurance. The Government's voluntary action to see that the necessary protection was furnished may properly be considered as a gift, as a benefit or as a perquisite of an otherwise burdensome employment. The equitable considerations involved do not compel, and the applicable legal principles will not justify considering the Government's action as an ordinary commercial transaction of guaranty.

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## VI. ARGUMENT.

The central question of this litigation has been passed upon by five District Courts. Three of the District Courts' decisions, the first three rendered in point of time, were in favor of the Government. These were *United States v. Nichols* (D.C.N.D. Iowa), 105 F. Supp. 543; *Morton v. United States* (D.C.E.D. N.Y.), 113 F. Supp. 496; and the decision of the District Court in this case. So far as can be determined neither *Nichols* nor *Morton* considered the additional questions listed under Heading III above.

Two District Courts ruled in favor of the serviceman. These decisions were *Hormel v. United States* (D.C.S.D. N.Y.), 123 F. Supp. 806, and *United States v. Hendler* (D.C.D. Colo.), 123 F. Supp. 383. The Court of Appeals reversed the District Court

in the *Hendler* case. That decision is reported at 225 F.2d 106.

---

### A. ANALYSIS OF THE CIVIL RELIEF ACT OF 1940.

The Soldiers' and Sailors' Civil Relief Act of 1940 is divided into six Articles. Article IV deals with the protection of private-company life insurance. In the Act it consists of Sections 400 to 414, inclusive. In the Code it is, or was, 50 U.S.C. App. Sections 540 to 554 inclusive. All of Article IV as well as Section 100 and part of Section 604 of the Act (50 U.S.C. App. Sections 510 and 584) are set forth in Appendix A to the Government's Opening Brief. In this brief, as in the Government's brief, we will use the section numbers found in the Act itself, rather than those of the Code.

#### 1. Silence of Act on Question of Reimbursement.

The original Article IV contained a rather elaborate scheme for determining how much the Government was to pay to each insurance company. It provided in detail for the time and manner of final settlement of accounts between Government and company. The Act *did not say* that servicemen were to repay the Government for amounts paid by it to insurers. The Act *did not say* that bringing a policy under protection would make the insured personally liable to pay premiums. There is no provision like that found in Section 406 of the 1942 amendments. There is no requirement that the insured sign a pre-

mium note. There is not one word that tells us how to calculate the amount any one serviceman might have to repay, or that tells us when or how or to whom any such repayment was to be made.

The silence of the Act on these matters means that if there is any obligation to reimburse it must be implied. The Government's position, of necessity, is that the request for and furnishing of protection was a transaction of guaranty which gave rise to an implied obligation to repay the guarantor for any moneys which it might lay out. We will discuss and answer that contention later in this brief. At this point we want to emphasize the significance of the absence of *any* machinery to effectuate repayment from insureds. When contrasted with the very specific provisions concerning the manner in which the Government's liability to the insurance company was to be computed and paid it seems obvious that Congress did not intend and did not contemplate that insureds who allowed their protected policies to lapse would be called upon to reimburse the Government.

**2. Provisions of the Act Negating Any Obligation to Reimburse.**

Significant as this Congressional silence may seem, we do not need to rest our case on what Congress did *not* say. What it *did* say is even more significant.

**a. The "Difference" Method of Determining the Amount of the Government's Liability.**

By means of monthly reports by the insurance company on "Monthly Difference Report" forms (V.A. Insurance Form 382; see Pl. Ex. 13, R. 125,

235, 274) a running account between company and Government was maintained on which the Government was charged for each unpaid premium on all of the protected policies issued by that company and on which the Government was credited with every payment of premiums on protected policies plus interest thereon at the policy loan rate if the premium had been past due when paid. (Section 406.) Each report showed the "difference" between such charges and such credits and the company got a certificate in the amount of this difference on which the Government would pay interest at the rate set by the Secretary of the Treasury, which was 3 per cent per annum, not compounded. (Sections 406, 407, 408; 38 Code Fed. Reg., 1941 Supp., Sec. 10.3312; Finding 23, R. 136.) On final settlement the amounts of all of the certificates, i.e., the aggregate of all of the "differences", would be credited to the company and the cash surrender value of all lapsed policies credited to the Government, provided that in no case was the credit to be *more* than unpaid premiums plus interest at the policy loan rate. (Sections 411, 412.)

Note that the Government's liability was not to be computed nor final settlement effected on the basis of individual policies, but that the amount it might eventually be called upon to pay a particular insurer was the *difference* between all credits and debits on one running account covering *all* protected policies of that insurer, plus simple interest at 3 per cent per annum. In other words, the Government's obligation was to be measured by the aggregate experience

of groups of policyholders, not by the individual experience on individual policies.

As stated in *Hormel v. United States,* supra, 123 F. Supp. at 812: "This is not a merely verbal difference. The lump sum settlement provided for is an amount which differs from the total that would be recovered if the Government should succeed in recovering in every case what it here seeks."

The reason for the difference lies in the provisions for credits in the Government's favor where the insured died or reinstated, or where there was substantial cash value in lapsed policies.

When a protected policyholder died during the period of protection the amount of any unpaid premiums plus interest at the policy loan rate (6 per cent compound in the cases of these respondents, and more than 3 per cent throughout the insurance business, R. 225-227) was deducted from the proceeds payable to the beneficiary and credited to the favor of the Government on the next Monthly Difference Report. So, due to the difference between the 3 per cent simple interest which had been accruing on the unpaid premiums and the 6 per cent compound interest which was credited to the Government on the Monthly Difference Report, that credit would be larger than the total amount, including interest, which had been charged against the Government on that policy; *and* on the final accounting between the Government and the insurer the "profit" that the Government had made on each death case would reduce

the amount the Government had to pay the insurer to something *less than* the total of unpaid premiums on policies that were allowed to lapse after protection plus 3 per cent simple interest on such premiums.

Likewise, if any insured reinstated his policy by paying the premiums which had accrued during the period of protection the Government would have received a credit for the unpaid premiums plus interest at the policy loan rate (Section 410; 38 Code Fed. Reg., 1941 Supp., Section 10.3313), and since all companies were charging more than 3 per cent on policy loans, the Government's net liability would have been reduced by each reinstatement.

Still further, if any protected policy, at the time of final settlement, had a cash value which exceeded the unpaid premiums plus 3 per cent interest thereon, the Government would profit because under Section 411 it was entitled to credit out of cash value up to the amount of the unpaid premiums plus interest at the policy loan rate.

A simplified example, illustrating how these factors would affect the Government's liability, is attached as Appendix C.

Additional examples of how the Government's theory would have worked out in practice are set out in the opinion in *Hormel v. United States,* 123 F. Supp. 806, 814-816. In one example the serviceman would have been obligated to pay the Government where the Government had not been required to pay out a penny on the policy involved!

**b. The Difficulty of Computing the Amount of Any Serviceman's "Obligation".**

At this point it would be more than a little difficult to determine what the Government would have paid any one insurance company on final settlement under the 1940 Act. It would be necessary to compile Monthly Difference Reports for the post-1942 period, and to make some decision as to the date on which final settlement would have occurred. Of course, we would not have these difficulties and the amount owing to each company would have been relatively easily determined if the original settlement system had not been abandoned.

Since the limit of the right of a guarantor to recover from the principal obligor is the amount actually laid out in his behalf (see Heading VI. C. 1., infra), it would be necessary to find some means of apportioning the Government's payment to each insurer in order to determine how much any single protected insured owed the Government.

It would be exceedingly difficult to do this. The simplest possible apportionment would be to divide the Government's payment to each company in proportion to the amount by which the unpaid premiums on each policy exceeded the cash value thereof at time of lapse. But the fairness of any such rough system of apportioning the "loss" would be open to serious question.

In the first place no such formula, nor for that matter any repayment formula at all, is to be found in the Act. Second, if the Veterans' Administration

had allowed one insured to borrow on his policy or take off accumulated cash value or dividends as permitted by Section 408, the result would be to give to him a larger share of the profit differential than he would otherwise get, and to decrease the share of all of the others proportionately. Third, such an apportionment would involve charging each insured with interest from the time of lapse to the time of settlement, a period when the insured was getting no benefits and the Government was enjoying the use of the money it owed the company. While it can be argued that the applicant knew this waiting period was involved, it is also arguable that he should not be charged for the Government's decision to postpone payment, particularly in view of the fact that only the Government had power to fix the date of final settlement, and thus the power to hold off final payment, until 18 months (6 months under Section 604 plus one year under Section 411) after it decided, in view of all of the many considerations involved, to terminate a war with a treaty of peace.

Charging interest for the waiting period raises a more difficult problem (discussed under Heading VI. C. 2., pp. 25-26, infra) because the total interest paid to the company would fall just as heavily on those whose policies had lapsed at or just before final settlement as upon those whose policies had lapsed years before that time.

Some men, after letting their policies lapse, have paid the Government something in response to its collection letters (see R. 299-304), and others un-

doubtedly paid the full amount demanded rather than go to the trouble of disputing the matter. Each such payment, and particularly the payments in full, would distort the picture further, and make it necessary to try to spread credit for such payments among those who didn't pay. And how could any formula equitably apportion the profit which the Government made on each such full payment?

It is indeed hard to believe that Congress could have intended to impose a liability to reimburse without devising a more workable system for determining the amount of each man's obligation.

**c. Indemnification Out of Policy Values.**

The Act speaks positively and in detail on the matter of what happens if the United States is called upon to pay. "To indemnify it against loss" Section 408 gives the United States a lien on protected policies and protects the security of such lien by prohibiting policy loans, settlements (by way of taking cash value or otherwise) and the payment of dividends except with the consent of the Veterans' Administration. If the policy is allowed to lapse Sections 410 and 411 preserve the policy's cash surrender value so that all or part of it may be allowed as a credit in favor of the United States on final settlement.

In each case where there are values inhering in the policy itself the Government in Sections 408, 409, 410 and 411, puts its finger on those values, to the extent of premiums plus interest at the policy loan

rate, forbids the alienation of such values, and thus protects itself to the extent that it can out of the policy itself. This much the Congress required for the protection of the Government—this much *and no more*. Here was the place to require payment if repayment was to be required. The possibility of financial loss to the Government was not overlooked—it was here considered and provided for *to the extent that Congress then desired to provide it. Expressio unius est exclusio alterius!*

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### B. ANALYSIS OF THE 1942 AMENDMENTS.

The amendments (56 Stat. 773, 50 U.S.C. Sections 540-548) were extensive. Article IV was completely rewritten, and the whole scheme of insurance protection was substantially changed. The text of the amended Article IV is attached to the Government's Brief as Appendix B. Again we will take section numbers from the Act rather than from the Code.

#### 1. Increase in Government's Liability at Election of Insurance Company.

Section 408(2) of the 1942 amendments gave the insurance companies the right to elect to abandon the system of accounting and settlement set up by the 1940 Act in favor of a new procedure where settlement would be made on individual policies shortly after lapse, and where they would be paid for unpaid premiums plus interest at the policy loan rate.

This is of particular importance here because the amount which the United States deducted from the

appellants' dividends was the amount which it was required to pay under the 1942 amendments, an amount substantially *greater* than it would have been required to pay under the 1940 payment formula.

The increase was due not only to the increase in the interest paid by the Government from 3 per cent simple to interest at the policy loan rate, but also to the extension of the period of protection from one to two years after termination of service and the elimination of the profit factor.

**2. Extension of the Period of Protection.**

Section 403 of the 1942 amendments extended the period of protection from one to two years after separation from service. Without their request respondents' policies were kept under protection a year longer than contemplated in the original contract, the insurer was paid for the extra year, and the amount deducted included the payment for the extra year. Was the extension applicable to previously protected policies? Section 403 does not by its terms apply to policies already under protection. And Section 408(1) says that the provisions of the 1940 Act remain in full force and effect with regard to all prior valid applications.

**3. The Express Indebtedness Provision Added in 1942 Applies Only to Subsequent Applicants.**

**a. Section 406 Says Just That.**

The indebtedness provision of Section 406 as amended in 1942 is as follows:

". . . The amount paid by the United States to an insurer *on account of applications approved under the provisions of this article, as amended,* shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law." (Italics added.)

Here is the indebtedness provision which the Government says shows Congressional recognition that a liability to repay was imposed by the 1940 Act. Does it show that? No! The indebtedness provision of the 1942 Act is expressly limited to applications approved under the Act *as amended.* The natural implication from this is that there was no indebtedness on account of applications approved *before* the amendments. As will be pointed out below (Heading VI. D. 3., pp. 33-36, infra) the legislative history shows that the words in italics were added to the original draft of the proposed amendment to the Act. In the words of the Court below:

"If veterans were liable for such payments under the 1940 Act, the additional language limiting the indebtedness provision to applications received after the effective date of the 1942 Act would have been pointless." (227 F. 2d at 628; R. 330.)

**b. Section 408 Says Previously Protected Policies Not Affected by Amendments.**

Section 408 makes a basic differentiation between the rights and obligations of insureds who applied

for protection before the amendments, and the rights of insurance companies as to such previously protected policies. The provisions of the old Act "remain in full force and effect" so far as the insureds are concerned; but the insurance companies are given the option, *whether or not their insureds agree,* to settle with the Government on the basis of individual policies and to collect interest not at 3 per cent, but at the policy loan rate.

It is impossible to reconcile Section 408(1) which says the rights and obligations of the insured are unchanged, with a requirement that the insured pay the Government what it paid the insurance company under the new, increased, 1942 payment formula.

If the Government's position here is correct it means that the 1942 Congress gave the insurance companies uncontrolled discretion to increase the "liability" of each of their insureds to the Government, and also gave these companies strong inducements to do just that. Is it reasonable to assume that Congress intended to put such power in the hands of these companies with complete disregard for the rights and feelings of the very servicemen it was trying to protect? Or is it more reasonable to assume that Congress was not concerned with what effect the insurance companies' election would have on individual servicemen because there would be no effect, there being no liability to repay in the first place?

We feel sure that the 1942 Congress had no idea of going to the men whose policies were already pro-

tected and telling them that Congress had modified their contracts, unilaterally and without their consent, increasing the burdens thereof as the price of continued protection. It is unthinkable that Congress would attempt to increase such burdens *without* telling the servicemen involved what had been done and giving them a chance to withdraw.

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**C. THE IMPOSSIBILITY OF RECONCILING THE DEDUCTIONS ACTUALLY MADE WITH THE THEORY OF IMPLIED OBLIGATION.**

**1. A Guarantor Is Not Entitled to More Than Full Reimbursement From the Principal Obligor.**

"Where a surety discharges the obligation on which he is liable by the payment of an amount less than its face value, or by the transfer of property of a lesser value, the general rule is that the principal has the right to the benefit of the bargain, and that the surety can recover from the principal no more than the amount paid by him or the value of the property transferred."

50 Am. Jur. 1068.

See, also:

50 Am. Jur. 760, Subrogation, Section 119;
118 A.L.R. 416.

This means that the very most which the Government could recover from any one protected insured would be his share of what the Government had paid his insurance company on final settlement in accordance with the procedures set forth in the 1940 Act.

**2. The Deductions Made Do Not Correspond With the Asserted Implied Obligation.**

What the Government has taken from respondents is what it paid the insurance companies under the 1942 payment formula, namely, unpaid premiums plus interest at the policy loan rate. This means that the factors on which the computation of respondents' assumed liability would be based have been changed in at least three respects: (1) The effective interest rate has been changed from 3 per cent simple to 6 per cent compound; (2) the "profit factor" referred to above has been eliminated; and (3) another year of protection has been added.

Twisting and turning on the horns of the dilemma on which it has impaled itself by deducting from respondents' dividends amounts which were arrived at without any reference to the only theory on which it could recover, the Government has conjured up a whole series of arguments in an attempt to explain away the difference.

These arguments fall into four groups: (1) There is no difference. (2) Even if there is a difference the Government is entitled to everything it took. (3) There may be a difference, but it doesn't really amount to anything; and (4) If we took too much we want to retry the case.

The "no difference" group comprises no less than four separate approaches to the problem. The first of these is that the Government is entitled to get back what it paid the company. While this amounts to trying to solve the problem by ignoring it, traces

of this approach remain in the Government's Brief herein. (See Br. pp. 12, 25-29.)

The next "no difference" argument is that there would not be any profit. "Any layman", it is said, could "determine the amount chargeable to the Government's guarantee in each particular instance", because once a policy matured (or was reinstated?) the payment of premiums and interest "eliminated that policy from the ultimate settlement procedure of Section 411 and therefore could not significantly affect the amount required to be disbursed on account of any other policy holder". (Br. pp. 39-40.) This is a patent distortion of what Sections 411 and 412 provide with regard to final settlement. Far from being "eliminated", the credits due to death and reinstatments would be reflected in the certificates to be tendered by the insurer on final settlement. The limitation of Section 411 on the amount of the cash surrender value of any one policy which could be credited to the Government doesn't eliminate *any* policy from the settlement procedure; what it does do is give the Government a profit on another group of policies, those which had more than enough cash value to cover unpaid premiums plus 3 per cent simple interest.

Next, the Government says there *can't* be a difference because if there were the Government's lien would be defeated; there would be no way to figure it out. (See Br. pp. 43-44.) This just doesn't hold water. The extent of the Government's lien is specified with particularity in Sections 409, 410 and 411—it is unpaid premiums plus interest at the policy loan rate if

the policy matures or is reinstated, and in other cases cash surrender value up to an amount equal to unpaid premiums plus policy loan interest. The difficulties that would be encountered in determining how much if anything the Government had paid on account of any lapsed policy where cash value was less than unpaid premiums plus policy loan interest arise because the statute does not specify with particularity, or at all, what is to happen in *those* cases.

The fourth argument in the "no difference" group is that Congress could not have known that the Secretary of the Treasury could fix the interest rate at 3 per cent and therefore could not have anticipated any disparity. (Br. p. 38, fn. 22.) No rate of interest fixed by the Secretary of the Treasury would have eliminated the disparity on all policies, as the rate of policy loan interest varied from company to company and from policy to policy. (R. 225-227.) Congressional unconcern over the rate shows that there was no thought of trying to avoid such disparities or any realization that it was desirable to do so.

There are two subdivisions of the "we were entitled to what we took" group of arguments. First is the claim that "the Act *does* indicate the amount for which the insured is liable; it contemplates that the insured is to pay the defaulted premiums plus interest at the policy loan rate." (Br. p. 39) This, they say, was what the insured owed the insurance company (Br. pp. 21-25) and when the Government paid as guarantor, this is what the insured owed the Government. (Br. pp. 25-29.) In other words, the Government was *entitled*

to take exactly what it did take even though that was more than it would have paid the company under the 1940 formula. This argument ignores the fact that under its theory the Government is not entitled to more than full reimbursement.

Next, the Government claims that "there is no reason why, in the absence of any overreaching the guaranty arrangements between the parties cannot provide" for reimbursement to the guarantor exceeding "his net outlay". (Br. pp. 42-43.) Perhaps the parties could have contracted to this effect. They didn't.

The third group of claims (Br. pp. 40-42) are an attempt to show that what the Government took was really not much different than the amount which would have been payable under the 1940 formula. This, they say, is because (1) the Government would have paid 3 per cent interest after protection had terminated and until final settlement, a longer period than that used in computing the policy loan interest under the 1942 formula; and (2) a guarantor is entitled to be reimbursed for all expenses reasonably incurred by him in connection with his undertaking. This last, presumably, includes the overhead costs of settling up and operating the insurance protection system.

Assuming that the Government would be entitled to reimbursement for interest costs during the period after protection (see Heading VI. A. 3. b., p. 15, supra), and that it has a right to charge its servicemen for the overhead costs of running such a program, only by statistical accident would the amount of liability produced by this method coincide with the amount

actually deducted in any one given case; and it could not coincide in any *two* cases unless two men at the same age took out identical policies on the same day with the same company, obtained protection the same day, were separated from service the same day, and both allowed their policies to lapse.

So far as the interest is concerned, it was possible under Section 410 of the Act that protection of a policy would continue right up to the date of final settlement. In such cases the Government would not have paid 3 per cent interest for a day longer that it was charging 6 per cent compound interest. And, there would be a whole range of cases between that and between the case where the time elapsing between termination of protection and final settlement was sufficient to make up the difference.

To come out even on all of these cases some men would have to be charged much more "overhead" than others—on what kind of a sliding scale is hard to imagine. This of course can't be reconciled with the claim that these men were liable for such overhead as part of their implied liability, for each man owed his ratable share of *all* of the overhead, or there wasn't *any* liability for overhead.

The final approach to the embarrassing discrepancy between what it has done and what its theory could support appears for the first time in the Government's Opening Brief in this Court. Over six years after this suit was filed, and after full argument before two lower Courts, the Government now admits (Br. pp. 44-45) that it might have deducted too much and asks per-

mission to retry the case if it "be limited to its net outlay."

We think our point is established: There *is* a difference between what the Government took and what it might be entitled to take on its implied obligation theory.

**3. The Government's Claim Exceeds the Maximum Possible Implied Obligation.**

The deductions here not only differed from what the liability might have been under the 1940 settlement formula, they exceeded the maximum possible implied liability under the 1940 Act.

In an effort to show the difference between using the 1942 formula as the measure of appellants' supposed liability and using each appellant's proportional share of the amount the Government would have paid under the 1940 Act formula we introduced our Exhibits 7, 8, 9, and 10. (R. 125, 205-206, 268-271.) A summary of these exhibits is attached as Appendix D. Due to the various uncertainties involved (e.g. when the final settlement under Section 411 would have taken place, the amount by which the Government's final payment would have been reduced by "profits" from other policies; etc.) it is impossible to establish this difference with exactness. Taking the Government's overhead costs into account would further complicate and confuse the picture. However, by eliminating credits from "profitable" policies from our computations, and disregarding overhead, but *including* the 3 per cent interest to the date of settlement, it may be demonstrated

that the difference as to Plesha was *at least* $57.94, as to Kern $125.87 and as to Mabbutt $21.55. This is the difference between the liability actually claimed by the Government (Column 1 of the Summary) and the maximum amount the Government would have been called upon to pay the insurance company if January 25, 1949, had been the final settlement date and only the one policy had been involved. (Column 4 in the Summary.) January 25, 1949 is used because that is one year after the date set for the expiration of the Civil Relief Act by Section 4 of the War and Emergency Powers Termination Act of 1947. (Pub. Law 239, 80th Congress, 61 Stat. 449.) If instead we take the difference between the amount here claimed by the Government and the Government's maximum obligation to the company on the particular policy on a date one year after the termination of the insured's military service (Column 3 in the Summary) the difference for Plesha is $75.18, for Kern $169.80 and for Mabbutt $34.69.

Any attempt to take into account the effect on the liability of each appellant of the deaths of protected insureds of California Western States Life Insurance Company (there were eight such deaths, R. 228-231; see Pl. Ex. 12, R. 125, 213, 273), the reinstatements of protected policies of that company (there were 38 such reinstatements, R. 212; Finding 28, R. 137), and the application of cash values in excess of unpaid premiums would require the use of an electronic computer.

These exhibits demonstrate that the Government *did* take more than its theory of liability could possibly justify. They show that continuing the 3 per cent interest beyond termination of protection does not make up the difference. How much difference would it make if we took overhead into account? Let us asume that we could decide which of the expenses of the Veterans' Administration were properly chargeable, that there was some evidence of what these costs were, and that we could decide how these should be apportioned among all the protected insureds of the several life insurance companies. Once such costs were spread among those "responsible" it seems most unlikely that they would do much more than offset the profit element which we also eliminated from the computations embodied in our Exhibits 7, 8, 9, and 10, much less eliminate the differences there shown.

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### D. THE PERTINENT LEGISLATIVE HISTORY CONFIRMS RESPONDENTS' POSITION.

#### 1. The 1918 History.

During World War I Congress passed a Civil Relief Act (Public No. 103, 65th Congress, 40 Stat. 440) which had insurance protection provisions much like those which appeared in the 1940 Act. Like the 1940 Act, the 1918 Act was silent so far as any obligation of servicemen to repay the Government was concerned, the only specific provision on the subject being Section 409 which contained the identical provisions giving

the Government a lien on the policy which were placed in Section 408 of the 1940 Act.

The Government has devoted some twelve pages of its brief to a discussion of certain Hearings and Memoranda before a Subcommittee of the Senate in 1918. As reference to Interrogatories 12 and 31 and the Answers thereto (not printed) will demonstrate, we have been unable to locate a copy of these "Hearings and Memoranda" and the Government has refused to supply us with one. Therefore, we must try to glean from the bits of information contained in the Government's Brief what Senator Overman actually said, what Dean Wigmore actually said, et cetera. Our task is not made easier by the fact that at critical points of the discussion the Government substitutes its conclusions as to what was said for what actually was said. And we look in vain for whatever it was in these Hearings and Memoranda that prompted the Administrator to say in his Decision No. 742 (R. 70):

> "It is equally true that statements may be abstracted from the hearings which tend to support arguments that the transaction did and that it did not create a debt."

Relegated to a footnote in an Appendix to the Government's Brief (p. 107, fn. 14) is this significant language from H. R. Report No. 181, 65th Congress, 1st Session, to accompany H. R. 6361 (which became the Civil Relief Act of 1918):

> "If the soldier comes back from the war he will repay the premiums if he continues the policy, and if he lets the policy lapse the Government will be subrogated to *his* rights." (Emphasis added.)

Thus, in what the Administrator has called "as clear a statement as any that may be found in the legislative history" (R. 71), we see that the Government will be subrogated to the *insured's* rights under the policy. This not only negates any idea of an obligation from the insured to the insurer to which the Government might be subrogated, it is a clear indication that Congress was looking no further than a partial reduction of the Government's "financial burden" through realizing on values inhering in the policy itself.

It is hardly surprising that the insurance companies were unhappy with the original draft of the 1918 Act which prohibited lapse but bound neither insured nor Government to pay premiums for the period when the companies were forced to keep the policies in effect. Nor is it surprising that Dean Wigmore and others recognized the basic unfairness of requiring the companies to furnish insurance for which no one was bound to pay. That the "new proposal", providing that the Government would pay if the insured did not, "met the objections of the industry" does not mean that the companies had bargained for or obtained statutory provisions making the insured personally liable to them for premiums or a provision giving them an option to accept or refuse protection. What the companies got was assurance that the premiums would be paid—by the Government—and with that they were satisfied. Dean Wigmore's statements, edited as they are, indicate that the principal if not the only means of recouping the Government's expenditures would be through the lien on policy values. The Government

admits (Br. pp. 53-54; 105) that there was no statement that the protected insured would be obligated to reimburse the Government. But whatever the Senators or Dean Wigmore may have said in subcommittee, this much is clear: There was nothing in the Act, as adopted, which "provided for a consensual arrangement creating an enforceable obligation on the part of the insured for his defaulted premiums," as the Government claims. (Br. p. 53.) The Government has not pointed to any language which says this. They cannot point to any provision which says anything like this because there *is* no such language in the 1918 Act or in the 1940 Act.

**2. The 1940 History.**

We agree with Administrator's Decision No. 742 that the 1940 "legislative history is of little, if any, help, and the insurance provisions of this Act, like those of the 1918 Act, must be interpreted on the basis of the language employed in the statute". (R. 72.)

House Report No. 3001 and Senate Report 2109, 76th Congress, 3d Session, state that if the protected serviceman does not pay up the unpaid premiums within one year after separation the policy lapses and the cash surrender value accrues to the Government to the extent necessary to meet the cost of the premiums which it has guaranteed.

The liability question was not touched on the floor of the Senate. (See 86 Cong. Rec. 12837.) In the House Mr. Voorhis and Mr. Arends briefly discussed (86 Cong. Rec. 13132-13133) the insurance provisions

of the Act. The Government and the District Court in the *Nichols* case (see 105 F. Supp. at 553) apparently consider these remarks significant. However, analysis of what the gentlemen said shows that neither of them understood Article IV well enough to speak about it with any authority. Both men thought that the *Government* was to pay premiums *as they came due,* and Arends thought certificates were to be issued to the *insured,* that he must pay back the *Government* within *one year* after separation, and that the Government had a lien against *the policy* until it was paid back. What the law provided, of course, was that if the insured did not pay the *insurer* the premiums within one year after separation, the policy would lapse after which the Government's lien attached to the cash surrender value. Before the Government actually paid anything its lien was exhausted and it had no security for the "deficiency". Article IV would have to be almost completely rewritten to conform to the "interpretation" thereof which emerges from these statements.

**3. The 1942 History.**

Apparently there was considerable dissatisfaction with Article IV of the 1940 Act, for as early as April 16, 1941 the Administrator wrote to the President of the Senate proposing various amendments "to substitute a more workable law". This letter, appended to Senate Report No. 716, 77th Congress, includes the following statement:

> "It is believed that the proposed amendment, if enacted, . . . will eliminate the possibility of

> requiring the government to pay premiums on insurance which the insured does not intend to carry except during his period of active service, and will considerably lessen the administrative cost in carrying out the provisions of the article as now enacted."

Bills to effectuate changes in the Act were introduced in both houses (S. 1372 and H. R. 4546) in April 1941. The development of the indebtednes provision in S. 1372 is most interesting. Originally it was

> " . . . The amount paid by the United States to the insurer* shall become a debt due to the United States by the insured. . ." (Asterisk added.)

On May 16, 1941, the words "on account of applications made subsequent to approval of this Act" were inserted at the point marked with an asterisk. (See R. 75; Br. p. 65, fn. 51.)

In October, Senate Report No. 716, offering an entirely new draft of Article IV, inserted at the point marked with the asterisk: ". . . on account of applications approved under the provisions of this Article, as amended."

S. 1372 was passed by the Senate on November 10, 1941, with no further changes in Section 406, which then contained the exact language which ultimately was enacted in October 1942. This November 1941 version of Article IV also included Section 408(1) which kept the 1940 Act in full force and effect as to policies previously protected.

A new bill, H. R. 7029, containing a repayment provision like that adopted by the Senate, was introduced

in the House. In the course of hearings thereon before the Military Affairs Committee, Mr. Breining, the Veterans' Administration Representative, was asked by the Chairman:

> "Q. How are the premiums paid on the existing $5,000? Does the insured pay half and the Government pay half, or does the insured pay all of it?
>
> "A. (by Mr. Breining). The insured is liable for all the premiums of the $5,000 policy, the Government acting really as a guarantor. However, if there is a default, there would not be any liability for the whole amount in excess of the cash value under the present construction of existing law." (Hearings before House Military Affairs Committee, May 25, 1942, p. 38; see R. 79-80.)

Leaving aside for the moment the significance of this statement so far as administrative construction is concerned, we note here that Congress is being told by the top insurance man in the Veterans' Administration that the protected serviceman is not liable to reimburse the Government "under present construction of existing law."

After these hearings H. R. 7164 was introduced on June 1, 1942 (88 Cong. Rec. 4785) and was passed by the House on June 18, 1942. (See 88 Cong. Rec. 5363-5372.) The Government says (Br. p. 67) that this bill was referred to on the floor of the House as a transaction of guaranty. Despite this fact, the bill, as passed, had *no provision* making the insured indebted to the Government for amounts paid by the Govern-

ment to his insurer, although, as seen above, H. R. 7029, on which the hearings were held, and S. 1372 *did* have such a provision. This is not inaction, this is not silence. This is the *elimination* of an unwanted provision from a law which would govern future transactions. The Senate insisted on its version of Article IV, including the indebtedness provision (88 Cong. Rec. 6707) and the bill went to conference.

After conference, the managers on the part of the House in House Report 2481 stated, *inter alia:*

> "Under the House bill, any amounts paid by the United States to an insurer on account of approved applications *do not become a claim* against the owner of the policy. The Senate Amendment (sec. 406) *made* such payments a debt due to the United States and authorized collection by deduction from any future amounts due the insured by the United States. The conference agreement retains the Senate provision." (Emphasis added.)

The 1942 legislative history tells us that the two houses of Congress were in *disagreement* as to whether liability to repay should be imposed with regard to policies protected thereafter. Was the 1942 Congress seriously considering giving "free insurance protection" to subsequent applicants while holding those already protected liable to repay? We think not. Further, and perhaps even more significant, the language added to the original draft of Section 406 and the language of Section 408 (1) seem almost conclusive evidence of an intent to restrict the indebtedness provision to future applicants.

**4. The Act of April 3, 1948.**

The Civil Relief Act of 1940 was passed more than seven years before the Act referred to on pages 70 and 71 of the Government's Brief. Thus the 1948 Act is too remote in point of time to merit any consideration here. *Penn Mutual Life Ins. Co. v. Lederer,* 252 U.S. 523, 538; *United States v. United Mine Workers,* 330 U.S. 258, 281.

Since the Administrator was preparing to make a collection effort after issuing his Decision No. 742 in 1947, some provision had to be made for the disposition of the money he intended to collect. Even if the 1948 Congress had had the power to arbitrarily settle in the Government's favor the very substantial controversy which was aired in Decision No. 742, there is no statement or implication in the 1948 Act that it intended to do that.

**5. Weight to Be Given to Legislative History.**

In *Ex Parte Collett,* 337 U.S. 55 at 61, the Court says:

> "Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of § 1404 (a), but from its legislative history. The short answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.' Gemsco Inc. v. Walling, 324 U.S. 244, 260, 89 L. ed. 921, 933, 65 S. Ct. 605 (1945)."

We submit: (1) That this is not a case of Congressional silence but one where the words used in the statute indicate with reasonable certainty that Congress did not intend to require reimbursement; (2) that the legislative history, taken as a whole, confirms this position; and (3) that the Government's legislative history argument is not free from "strained processes of deduction from events of wholly ambiguous significance."

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### E. ADMINISTRATIVE CONSTRUCTION, UNTIL 1943, SUPPORTS RESPONDENTS' POSITION.

#### 1. Regulations, Forms, and Explanation to Armed Forces.

The most significant bit of contemporary administrative construction of the 1940 Act is ignored in the Government's Brief.

Immediate administrative construction of the Civil Relief Act of 1940 was made necessary by Section 401 which required the Administrator of Veterans Affairs to prescribe regulations, prepare and furnish forms, and "issue through suitable military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions" of Article IV.

The original Regulations (38 Code Fed. Reg., 1941 Supp., §10.3300 et seq.; see Answer to Interrogatory No. 4, R. 17) are silent on the subject of repayment. Section 10.3310, which paraphrases Section 408 of the Act, and Section 10.3314, which paraphrases Section

410 of the Act, are about all that can be found which have any direct bearing. There is nothing remotely resembling a statement that the serviceman is under any liability.

The official statement to the Armed Forces (V. A. Insurance Form 385; not printed, see Answer to Interrogatory No. 5, R. 17-18; Finding 25, R. 136) under the headings "Indemnity", "Maturity" and "Settlement" paraphrases the Act. Again *nothing* is said which gives the slightest hint that the Act imposed any obligation to reimburse.

The Application for Benefits (V. A. Insurance Form 380, R. 291-293), and the Notice of Approval (Form 394, copies of which appear in Defendant's Exhibits A, G and H, not printed; see Finding 24, R. 136) contain positive language as to what consequences would follow if the insured did not pay the premiums within a year after leaving the service. Personal liability is not one of the enumerated consequences. If the responsible officials thought or had any idea that a personal liability to repay had been imposed by Congress it was their duty to so draft these forms, especially Form 380, the application form, as to make clear and certain the Government's right to such reimbursement.

**2. Statements of Veterans' Administration Officials.**

Shortly after the Act became law, insurance companies and others made inquiries of the Veterans' Administration concerning the very question which concerns us here.

Harold W. Breining, then Assistant Administrator for Insurance and head of the Government's whole insurance program is quoted in the January 31, 1941 issue of the Eastern Underwriter, an insurance trade magazine, as follows:

> "There is no provision in the Act at this time for collecting from the insured the amount that the premium with interest may exceed the cash surrender value at the time of termination." (Answers to Interrogatories 7 and 27, R. 19, 45-46; Finding 26, R. 136-137.)

On February 21, 1941, Mr. H. L. McCoy, then Director of Insurance for the Veterans' Administration, in reply to a question from a Mr. Peters of the Jefferson Standard Life Insurance Company asking whether the protected serviceman could be "embarrassed by the Government" if he let his policy lapse, said this:

> "There is no provision in the Act whereby the Government may be reimbursed by the policyholder in the amount paid to the insurer in those cases where there was no cash surrender value or where such value was insufficient to cover the indebtedness." (Answers to Interrogatories 8 and 28, R. 19-20, 46-47; Finding 26, R. 136-137.)

In the McCoy-Henig correspondence (See answer to Interrogatory No. 29, R. 47-48; Finding 26, R. 136-137) the question was even more point-blank and the answer was the same, that there was no provision in the Act for collecting from the insured.

When we consider these statements, the Administrator's letter of April 16, 1941 to the President of the Senate, quoted above, and Mr. Breining's statement to the House Committee on Military Affairs, also quoted above; when we look at the forms, regulations, and official statement to the Armed Forces; and when we also consider that not until March 1, 1943 did any Government official do or say anything publicly indicating a view that the Act imposed an obligation to repay; we are irresistibly impelled to the conclusion that the original administrative construction of the Act was that it imposed no such liability. See *United States v. Nichols,* 105 F. Supp. at 555-556.

**3. Administrator's Decision No. 513.**

Administrator's Decision No. 513, issued March 1, 1943, (R. pp. 56-61) does not do much more than state the problem and announce a conclusion. After stating that the Government's voluntary assumption of its "guarantee of premiums . . . was not a contract right and the United States Government received and asked for no consideration for extending the privilege," the Decision announces that "it is believed" that Section 406 of the 1942 amendments

> "was merely in cognizance of the original common law right plus the specific provision which permits set-off . . ." (R. 60.)

Why this abrupt reversal of the earlier position of the Veterans' Administration? The Decision offers this hint:

"There exists no question as to any modification of a contract; but in any view the Government's gratuitous assumption of liability conditioned upon the insured's application for the benefits of the Act and the insurer's consent would not constitute such type of agreement as would preclude Congressional action looking toward reasonable safeguarding of the public interest." (R. 61.)

This seems to say that the already protected insured had no such contractual rights as would prevent Congress from retroactively imposing the liability on him to reduce or eliminate any financial loss to the Government. By parity of reasoning the Administrator was free to reverse his previous interpretation which, it now appeared, was going to cost too much.

**4. Administrator's Decision No. 742.**

While Decision 513 was not given wide circulation (see Answers to our Interrogatory No. 3, R. 15-17), its correctness was "seriously questioned" and the Administrator undertook a "careful reexamination" of the question in his Decision No. 742 dated April 1, 1947. (R. 62-94.)

Since the rationale of the Government's position as expressed in its most recent brief is basically the the same as that expressed in this Decision, we will combine our analysis of the Decision with our Refutation of the Government's Arguments, Heading VII, below.

**5. Administrative Construction of the 1918 Act.**

The Government would have us believe that the use of the word "guaranty" in some Government pamphlets and reports amounted to an administrative ruling that the Act created an obligation to reimburse (Br. pp. 54-55), that the 1918 application form "necessarily carried with it an acknowledgment of a future debt or obligation to the United States" (Br. pp. 55-56), that the Government sought and obtained reimbursement in those cases where it had paid the insurer (Br. pp. 14-15; 36; 56-58), that the precise extent of these efforts to collect is not known, but "a list of at least 14 such cases is presently at hand" (Br. p. 57), and that these collection efforts were reported to Congress in 1924 and were known to Congress in 1940. (Br. pp. 15; 36; 57.)

Some of these claims are misleading and the rest are just not true in any sense.

To say that statutory language creates a particular relationship between an insurer and its insured or between the insured and the Government, because Government officials, in actions calling for no nice discriminations between guaranty and indemnity, have characterized the relationship between the Government and the insurer as one of guaranty, is to substitute labels for analysis. See Heading VII. A. 2., pp. 68-70, infra.

The statement about the application form is completely unsupported by the words thereof. The 1918 application form, like its 1940 counterpart, by specifying the particular fund (policy values) from which

the United States could be reimbursed, defined and limited the commitment made by the insured and the rights of the United States. See Heading VI. F. 1., pp. 46-48, infra.

With regard to collection efforts after World War I, at the trial of this case the United States introduced evidence (Exhibits K, L and M, R. 250-251, partially reproduced at R. 305-313) which shows that some collection efforts were in fact made. However, this evidence also shows that it is not true that collections were made in "at least 14 such cases." Defendant's Exhibits show that only *ten* individuals were involved. The total collected from these ten men was $484.42; and the total of all collections reported to Congress in the Administrator's final report was $484.42. (Exhibit L; R. 305-312.) Exhibit K (not printed) shows that nine of the ten (records concerning the tenth man for some reason were not included) were still in the service when approached and that military pressures were brought to bear on them.

It would seem reasonable to infer from all this that no efforts were made to collect from anyone except these ten men. Certainly there is no *evidence* of any further efforts, and the Government refused to respond to our Interrogatories 17, 18 and 19 seeking information along these lines. (R. 24-26.)

It seems to us to be stretching things more than a little to charge the 1940 Congress with actual knowledge of the details of an obscure report rendered more than 15 years before, and to assume therefrom that

ever about reimbursement—reflected an understanding that the Act was creating a liability to reimburse. There is no showing in the fragmentary and "selected" evidence on this subject that this so-called administrative construction was brought home to the 1940 Congress so as to have influenced the thinking of that body in the slightest degree.

One more observation on the 1918 administrative construction: It is not correct to say, as did Judge Graven in the *Nichols* case, that "the relatively small loss sustained" in the 1918 operation indicates a construction "that the Government was not to bear the expense of such guaranteed premiums." (105 F. Supp. at 555). To the contrary, Exhibit M shows that the "relatively small loss" was due to the small lapse ratio ($19,868.07 of premiums on lapsed policies, out of $362,399.50 in past due premiums guaranteed—just over 5 per cent), and that less than 3 per cent of the Government's "loss" was recovered by administrative action ($484.42 out of $19,868.07).

**6. Weight to Be Given to Administrative Construction**

It is stated in *Nichols* that Decisions 513 and 742 were inconsistent with the "equivocal" position previously taken on the question, and therefore neither construction can be considered to be "of controlling significance." 105 F. Supp. at 555-556. On this point of non-uniform construction see also *Merritt v. Cameron*, 137 U.S. 542; *Burnet v. Chicago Portrait Co.*, 285 U.S. 1; *United States v. Missouri Pacific R. R. Co.*, 278 U.S. 269.

We can agree that the Decisions were inconsistent with the prior administrative construction; we cannot agree that the prior construction was equivocal. The Regulations, the Forms and the explanation to the Armed Forces plainly indicate administrative construction against liability.

Where *reliance* has been placed on a particular administrative construction so that injury would result if that construction were changed, the construction relied on will be given special weight. See *Sanford v. Commissioner*, 308 U.S. 39; *Grand Trunk Western R. R. Co. v. United States*, 252 U.S. 112; *United States v. Alabama G. S. R. Co.*, 142 U.S. 615. Respondents relied and acted on the original construction.

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**F. AS A MATTER OF CONTRACT THE GOVERNMENT'S RIGHTS ARE LIMITED TO A LOAN ON POLICY VALUES.**

**1. The Contract Documents Establish and Delimit the Government's Rights.**

The liability here asserted is contractual in nature. As in other contract cases the rights and obligations of the several parties depend on the documents they prepared and executed. There is no liability unless those documents provide for it expressly or by necessary implication.

If this is a case of statutory interpretation it is so because the provisions of the Civil Relief Act of 1940 must be considered as part of the contract. But the Act is only one of the contract documents. The Regu-

lations and the official explanation to the Armed Forces (Form 385) probably should be considered as contract documents. The documents which were actually signed were the Application for Benefits (Form 380) and the Notice of Approval (Form 394).

In addition to data about the applicant and the policy to be protected the Application contained the following language:

> "I, the insured under the above identified policy issued by the above named insurer, do hereby make application to have said policy protected in accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, and to that end I do hereby consent and agree to such modifications of the terms of the policy as are made necessary by the provisions of the Act; with the understanding that the insurer (Company or Association), by receiving and filing this application, shall be deemed to have assented thereto, to the extent, if any, to which the policy is within the provisions of the Act. . . .
>
> "In consideration hereof, I hereby consent and agree that the United States shall be protected in the amount of any premiums and interest guaranteed on the above numbered policy in the event of its maturity as a claim, or out of the cash surrender value of the policy, at the expiration of the period of protection under the Act." (R. 291-293.)

This, then, was the situation when application for protection was made: The applicant, newly in uniform, at the urging of his superior officers was attempting to put his private affairs in sufficiently good

order so that he could forget such things and concentrate on learning how to fight a war.

Let us assume that he could and did read every word of the Act, the Regulations, the Explanations and the Application. These were all of the materials available to him—unless he was also expected to research the Congressional Record for 1918 and 1940—these were the contract documents.

Nowhere in any of these documents is there the slighfest hint that the serviceman is assuming any obligation to pay premiums or to reimburse the Government for doing so.

To the contrary, so far as the relationship between insured and insurer was concerned the Act provides that if premiums are not paid within a year after separation the policy will lapse. This much was specified; this much and no more. So far as the relationship between insured and Government was concerned there is the agreement "that the United States shall be protected . . . in the event of (the policy's) maturity as a claim, or out of the cash surrender value of the policy . . ." This was all the Act expressly required, *and* all that the Government asked for "in consideration" of its commitment to the insurer.

The serviceman's commitment and the Government's rights are spelled out, specified, defined and delimited in these contract documents.

**2. Application of Pertinent Rules of Interpretation Further Demonstrates the Limited Nature of the Government Rights.**

**a. The Contracts of the United States Are to Be Interpreted in Accordance With the Usual Rules.**

"Although there will be exceptions, in general the United States as a contractor must be treated as other contractors under analogous situations. When problems of the interpretation of its contracts arise the law of contracts governs. *Hollerbach v. United States,* 233 U.S. 165, 171, 172, 58 L. ed. 898, 901, 34 S. Ct. 553; *United States v. Bethlehem Steel Corp.,* 315 U.S. 289, 298, 299, 86 L. ed. 855, 862, 863, 62 S. Ct. 581. We will treat it like any other contractor and not revise the contract which it draws on the ground that a more prudent one might have been made. *United States v. American Surety Co.,* 322 U.S. 96, 88 L. ed. 1158, 64 S. Ct. 866."

*United States v. Standard Rice Company,* 323 U.S. 106, 111.

See also:

*Priebe & Sons v. United States,* 332 U.S. 407, 411;

54 Am. Jur. 572, 581-582, United States, Sections 62, 68.

**b. The Unexpressed Intentions or Understanding of the Government Cannot Be Considered.**

"The apparent mutual assent of the parties, essential to the formation of a contract, must be gathered from their outward expressions and acts, and not from an unexpressed intention. It is said that the meeting of minds, which is essential to the formation of a contract, is not determined by

the secret intentions of the parties, but by their expressed intentions, which may be wholly at variance with the former. The question whether a contract has been made must be determined from a consideration of the expressed intention of the parties—that is, from a consideration of their words and acts."

12 Am. Jur. 516-517, Contracts, Section 19.

See also:

Restatement of Contracts, Sections 20, 70, 71.

What was in writing here was certainly such as to justify a belief on the part of the serviceman that the Government was voluntarily providing him with a benefit which went with his military service and which he was not otherwise expected to pay for.

If the Government had a different understanding or intention it had every opportunity to express its views and desires; more, it was required by the Act itself to explain fully and fairly to those it was assuming to help and protect.

Under these circumstances then there is more than the usual basis for holding to the objective test of mutual assent and rejecting evidence of unexpressed intentions. Thus we cannot consider such items as the Voorhis-Arends exchange in the House, the remarks made in a Senate Subcommittee in 1918, or the collections from the ten men after World War II without applying a subjective standard; for even if these things show the thinking of administrators, even if they had affected the thinking of Congress in 1940, they did not find *expression* in any of the contract

documents nor can it be said that the other contracting party knew or should have known of them. At the very best they are evidence of the unexpressed intentions or understanding of *one* of the contracting parties, and as such they are entitled to no consideration.

**c. Any Doubts Must Be Resolved Against the Government Which Prepared the Contract Documents.**

> "Doubtful language in contracts should be interpreted most strongly against the party who uses it. A written agreement should, in case of doubt, be interpreted against the party who has drawn it."
>
> 12 Am. Jur. 795, Contracts, Section 252.

Having prepared all of the contract documents, and having failed to make explicit that which could so easily have been expressed, any ambiguity, any doubt created by such omission should be resolved against the Government and in favor of the serviceman. To now permit the Government to add terms of critical importance to this contract which it suggested and prepared would be to create doubts and conjure up ambiguities where there are none, and then resolve the "uncertainties" thus raised in favor of the draftsman of the contract.

An interesting application of these rules was made in *Kershner v. United States*, 215 F. 2d 737 (C.A. 9). A veteran, insured under the National Service Life Insurance Act, was misled by Government doctors into believing that he had hopes of recovery when there was none. As a consequence he did not exercise his

right to obtain a waiver of premiums due to disability, and he allowed his policy to lapse. His beneficiary sued. The Court held that the somewhat ambiguous and doubtful language of the insurance contract should be construed against him (the Government) who wrote it. "A further reason for generosity in favor of the veteran" was found in the paternalistic position which the Government has assumed toward veterans. Recovery was allowed.

**3. The Government's Acts and Omissions Have Been Such as to Estop It From Claiming Reimbursement.**

The failure of Congress to say anything in the Act about a liability to reimburse, the failure of the Administrator to draft contract documents which would make the matter clear, or to explain it in his statement to the Armed Forces, the public statements of top officials of the Veterans' Administration, the changes made in 1942 without consulting or obtaining the consent of the servicemen, the failure of the Administrator to circulate to the Armed Forces any information about his Decision No. 513 and the change of position it represented (see Answer to Interrogatory No. 3, R. 15-17), all these things and others have created a situation where the Government ought to be estopped from asserting this liability.

If respondents ever were under a burden imposed by the 1940 Act, that burden should now lie borne by the Government as a matter of honor as well as a matter of law.

### G. THE COURTS SHOULD NOT IMPOSE SUCH A LIABILITY WHERE CONGRESS HAS NOT SPOKEN.

In *United States v. Gilman*, 347 U.S. 507, this Court was faced with a problem which was basically the same as that involved here. The Government had been held liable under the Federal Tort Claims Act, 60 Stat. 842, 28 U.S.C. Sections 1346, 2671 et seq. for the negligence of an employee. It sued him, demanding reimbursement. The Act did not touch the liability of the employee except to make the judgment against the United States a bar to any action by the claimant against the employee. The Government, however, claimed that it had a common law right of indemnity against the negligent employee, a right to be implied from the legal relationships created by the Act. After weighing the "myriad of problems" involved, including the extent of the burden on the Government and the effect on employee morale, a unanimous Court declined to impose the liability, saying:

> "Here a complex of relations between federal agencies and their staffs is involved. Moreover, the claim now asserted, though the product of a law Congress passed, is a matter on which Congress has not taken a position. It presents questions of policy on which Congress has not spoken. The selection of that policy, which is most advantageous to the whole, involves a host of considerations that must be weighed and appraised. That function is more appropriately for those who write the laws, rather than for those who interpret them."
>
> 347 U.S. at 511.

While the considerations involved in *Gilman* and in the case at bar naturally differ to some extent, the same important questions of policy arise in both. There as here the Government asserts a common law right of reimbursement under a statute making the Government liable where it was not liable before the statute was enacted. There as here the right is sought to be implied out of a statute which did not expressly confer it. There as here the right is asserted against one who is or was a Government employee, and one to whom the Government owed various duties on moral and legal grounds. There as here there are a myriad of problems involved in weighing the equities of the situation. Among these are the financial burdens assumed by the Government, and the matter of employee efficiency and morale. Is soldier morale less important than the morale of civilian employees? Involved there and here are "a complex of relationships" between Government and those directly involved in carrying out functions of Government. Moreover, both claims are the product of laws passed by Congress in which it had expressed no position, and both present questions of policy on which Congress has not spoken.

Such differences as there are between the two cases seem to us to furnish additional reasons why a liability to reimburse should not be implied in the case now under consideration. In *Gilman* the employees were personally liable for their negligent acts before the Act was passed; in our case the insureds were not personally liable for premiums prior to placing their policies under protection. In *Gilman* the employees remained personally liable after the Act, the remedy

against the Government being an alternative to the remedy against them; in our case the very question at issue is whether there was any personal liability to insurer *or* Government after protection under the Act. In *Gilman* the Act was completely silent on the question of reimbursement; in our case there are many positive indications in the Act that no liability to reimburse was intended. In *Gilman* there was no statutory obligation resting on the Government to explain the meaning of the Act, and no failure to make that explanation. In *Gilman* there were no misleading official and semi-official statements of the Government's position on the strength of which the employee acted. In *Gilman* the employee's alleged liability did not rest on contract documents prepared by the Government which contained no hint that any liability was involved.

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**H. THE ACT SHOULD BE LIBERALLY CONSTRUED IN IN FAVOR OF THE SERVICEMAN.**

The opinion of the Court of Appeals begins its discussion of the central issues of this case with the following language:

> "The District Court applied a rule of interpretation of the ambiguous provisions of the legislation and the Congressional comment thereon adverse to the veterans for whom the legislation was created, classifying them as amongst those who are engaged 'in an attempt to syphon off some more of this nation's already fast ebbing fisc'.
>
> "With this we do not agree. Rather we think Congress was contemplating the veterans inca-

pacitated by bullet-inflicted wounds, or weakness from treatment while held as enemy prisoners and those having families and dependents to support in occupations lost with their savings exhausted during their war activities and the physicians and dentists who have lost their patients and the lawyers who have lost their clients and the business men who have lost their enterprises.

"This we think is what the Supreme Court also had in mind when it established its rule of liberal contruction favorable to the veteran in construing the Soldiers' and Sailors' Civil Relief Acts. 'The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation.' Boone v. Lighter, 319 U.S. 561, 575 (1943); Le Maistre v. Leffers, 333 U.S. 1, 6 (1947)." 227 F. 2d at 626; R. 327.

Here, after due consideration has been given to the language of the Act and to all of the other circumstances and factors which might affect the resolution of this case, we find an additional and a compelling consideration for a decision in the serviceman's favor.

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## I. INCREASING THE BURDEN OF RESPONDENTS' OBLIGATION, IF ANY, WOULD BE UNCONSTITUTIONAL.

Assuming liability to repay under the original Act, and that the measure of the liability was to reimburse the Government for what it might pay an insurance company under the 1940 settlement formula,

*could* Congress, without the consent of protected insureds, require them to reimburse the Government for the greater amount which it voluntarily agreed to pay the companies under the 1942 settlement formula?

Here, after all of the imponderables of the situation have been resolved against the serviceman by implying against him the maximum liability that possibly can be implied on any guarantor-reimbursement theory, we come to a question of power. If Congress had the power to increase the liability at all it had the power to increase it to any extent it chose, either for the benefit of the Government or for the benefit of the insurance companies. In this particular case the suggested interpretation of the Act involves *taking the insureds' money without their consent and giving it to the insurance companies.*

Article I, Section 10 of the Constitution proscribing "laws impairing the obligation of contracts" prohibits State Legislatures from increasing the burdens as well as diminishing the efficiency of contracts. *Columbia Railway etc. Co. v. South Carolina,* 261 U. S. 236, 251. But this does not answer our question; this prohibition is not binding on the Federal Government.

Is it the law then that the United States, when it is a party to express or implied contracts, may unilaterally modify such contracts as it wills, and that the other party or parties to such contracts have nothing to say about it? No!

> "When the United States, with constitutional authority, makes contracts, it has rights and in-

curs responsibilities similar to those of individuals who are parties to such instruments. There is no difference, said the Court in *United States v. Bank of Metropolis*, 15 Pet. 377, 392, 10 L. ed. 774, 779, except that the United States cannot be sued without its consent."

*Perry v. United States*, 294 U. S. 330, 352.

In *Lynch v. United States*, 292 U. S. 571, the United States had sought to avoid its obligations under certain war risk insurance policies issued during World War I. This Court refused to countenance this, observing:

"The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. (Citing cases.) When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals. That the contracts of war risk insurance were valid when made is not questioned. As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, the due process clause prohibits the United States from annulling them, unless, indeed, the action taken falls within the federal police power or some other paramount power." (292 U. S. at 579.)

Is it any less offensive to due process to make a new contract or increase the burdens of an existing

contract without the consent of the other party than it is to abrogate contract rights? The *Columbia Railway* case, supra, firmly said "no" to a fully analogous question under Article I, Section 10.

There is a further answer to our problem to be found in the just compensation clause of the Fifth Amendment. In *Louisville Joint Stock Land Bank v. Radford,* 295 U.S. 555, 589, 602, Mr. Justice Brandeis, speaking for a unanimous Court said:

> "The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment. Under the bankruptcy power Congress may discharge the debtor's personal obligation, because, unlike the States, it is not prohibited from impairing the obligation of contracts . . .
>
> "The province of the Court is limited to deciding whether the Frazier-Lemke Act as applied has taken from the Bank without compensation, and given to Radford, rights in specific property which are of substantial value . . . As we conclude that the Act as applied has done so, we must hold it void. For the Fifth Amendment commands that, however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public."

Is it any less offensive to take from an insured and give to his insurer than it is to take from a mortgagee and give to his mortgagor? The Frazier-Lemke Act had the dubious virtue of taking from the rich and giving to the poor; the Civil Relief Act of 1942, interpreted as the Government would have it, represents an attempt to take from the poor and give to the rich!

We respectfully submit that any attempt by Congress to increase plaintiffs' liability (if any) would be beyond the power of Congress and unconstitutional.

We further submit that it is not necessary for the Court to reach the constitutional question, since there was no liability to be increased.

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### J. FAILURE TO PROVE THE AMOUNT OF THE OBLIGATION.

In earlier stages of this litigation we have contended that even if it be concluded that the Government is entitled to reimbursement, it did not have the right to offset this liability against respondents' National Service Life Insurance dividends, and further that it has failed to prove how much it was entitled to deduct.

We still hold strongly to the opinion that the administrative interpretation of 38 U.S.C. Section 454a that anything of value obtained by a veteran under color of the laws relating to veterans is an "overpayment" within the meaning of Section 454a is an emasculation of that section.

However, since respondents are not desirous of winning on a technicality, nor of avoiding payment of their obligations if they are obligated, we do not urge this point upon the Court.

This does not quite dispose of the offset point, for if both liability and the right of offset be assumed, the Government has not proved how much it was entitled to take. If the Government is entitled to any repayment from these respondents it is entitled to collect their share of what it would have paid their insurer under the 1940 settlement formula. There has been no proof whatever on this point, as is tacitly admitted at pages 44-45 of the Government's Brief. Having completely failed to sustain the burden of proof which rested upon it (see 47 Am. Jur. 786, Setoff and Counterclaim, Section 103), after having full opportunity to make that proof, the Government should be required to return the moneys which it has withheld.

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## VII. REBUTTAL OF GOVERNMENT'S ARGUMENTS.

### A. THE COMMON LAW GUARANTOR ARGUMENT.

Most of the Government's Brief is devoted to an attempt to prove that its position under the Act was that of a guarantor and that it is entitled to reimbursement as such. The argument can be expressed in this syllogism:

*Major Premise:* By making application for protection the insured became contractually obligated (as principal obligor) to pay to the in-

surer (as obligee) all premiums coming due during protection.

*Minor Premise:* Under the Act the Government was the guarantor of that obligation, and when it paid the insurer it paid, as guarantor, the insured's "debt".

*Conclusion:* Therefore the Government is entitled to reimbursement, as a guarantor, of the amounts which it deducted from appellants' dividends.

**1. The Major Premise.**

If in fact the insurance company could not compel the insured to pay his premiums, the Government did not pay *his* debt and the whole syllogism falls. The Government admits as much, by its statement (Br. p. 23) "that the concept of guaranty implies the existence of a primary obligation".

It is beyond question that there was no personal liability to pay premiums imposed by appellants' policies (Pl. Ex. 14, 15, 16 and 17, R. 125, 247, 275-287) or by insurance policies generally (testimony of Marcus Gunn, R. 219-222), prior to protection. Did the act of placing a policy under protection make the insured liable to pay premiums when he was not liable before?

The Government tries to supply a "yes" answer to this question by claiming (Br. pp. 53, 104) that the Act provides for a voluntary and consensual arrangement between insured and insurer, wherein the insured was not compelled to keep his insurance in

force, and wherein the insurer was not obligated to agree to keep the policy alive if *it* did not want to enter into the protection arrangement; by claiming (Br. pp. 21-25) that the Act specifically or by necessary implication provides that the insured is liable to the insurer for premiums; and by arguing (Br. pp. 21-22) that in any event an obligation to pay should be implied out of the insured's request that insurance protection be extended during a specific period. With some refinements this is the rationale of Administrator's Decision No. 742. See R. 84-85.

With regard to the first of these propositions, we agree, of course, that the insured was not required to put his insurance under protection. However, so far as we know it has never before been suggested that it was optional with the creditor, the landlord, the tax collector, the insurer, or any of the others whose dealings with servicemen were brought within the reach of the Civil Relief Acts, to grant or deny the serviceman the benefits of those Acts. The language of Section 401 of the 1918 and 1940 Acts is that "by receiving and filing the (application) the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy in which the application is made is within the provisions of this Article". Section 402 of both Acts provides that "the benefits of this Act *shall* be available to *any* person in military service. . . ." (emphasis added.) Section 406 of both Acts says that "every insurance corporation . . . to which application has been made . . . for the benefits of this Article *shall* render" reports concern-

ing all such applications. (emphasis added.) Nowhere in the Act or in the Regulations (see 38 C.F.R., 1941 Supp., Sections 10.3301, 10.3308) is there the least suggestion that the insurer could decline to join in the arrangement, or the tiniest hint as to what procedure is to be followed if it should choose to decline.

The fact that the Acts (1918 and 1940) required the applicant to consent in writing "to *such* modification of the terms of the original contract of insurance *as is made necessary* by the provisions of the Act" (emphasis added) does not prove that he agreed to be personally liable for premiums. The modifications consented to and *made necessary* by the Act were that the policy be not lapsed during protection, the agreement that the Government be "indemnified" (not "reimbursed") out of policy values in matured, reinstated or lapsed policies, that dividends be withheld and that loan and surrender rights be suspended. *These* modifications, and no others, were specifically and expressly agreed to in the application.

Nothing in Sections 409, 410, or 411, does more than require application of policy values in certain specified events. Section 410 provides that if the insured does not pay past due premiums plus interest within a year of separation, the policy shall lapse. If the insured was to be liable to the insurance company for premium payments, Congress could have said so right here, by requiring the insured to give the company a premium note or by just *saying* that he was thus liable. But, neither Section 410 nor the application form say anything of the kind. On the contrary, by providing that

the consequence of non-payment is lapse of the policy, and failing to list any other consequence, Section 410 makes it plain that the insurance company could *not* compel the insured to pay.

Terms like "defaulted premiums", "unpaid premiums" and "past due" premiums are entirely consistent with and frequently found in life insurance policies which impose no personal liability to pay premiums.

The requirement that premiums be paid with interest does not prove the existence of an obligation to pay them. (See Br. p. 25.) There is no obligation to repay policy loans on life insurance but such loans bear interest.

Nor does the existence of a lien prove a debt to pay premiums. (See Br. pp. 24-25, 31-32.) There are many situations where property is subject to a lien but the owner thereof is not personally liable to the lienor. Familiar examples include mechanics liens of subcontractors not in privity of contract with the property owner, mortgages put on property by a former owner, and policy loans made on the sole security of life insurance policies. Respondents' policies did not make policy loans a personal obligation (Finding 22, R. 135-136), nor do life insurance policies generally. (R. 222-225.)

Without a premium note, without any kind of an express agreement on the part of the insured to stand personally liable, the Government occupies the same position as the life insurance company which has made

a loan on the sole security of a policy. Analysis of the Act shows that that is just the position Congress intended the Government to occupy; the whole approach is to treat the unpaid premiums as a policy loan on the sole security of the policy and to subrogate the Government to the companies' rights in connection with such loan. Section 408 gives the Government the same lien on policy values that is found in insurance company policy loans. The payment of unpaid premiums plus policy loan interest out of matured policies provided by Section 409 operates in exactly the same manner as if the policy contained an automatic premium loan provision requiring the company to treat accruing unpaid premiums as a policy loan. That the interest called for by Sections 409, 410 and 411 is "interest at the rate provided for in the policy for policy loans" confirms the policy loan approach, and thus disproves rather than proves the existence of an underlying debt to the insurer.

Section 406 of the 1942 amendments makes the policy loan concept explicit: ". . . the amount then due shall be treated by the insurer as a policy loan on such policy . . ."

Coming now to the implied obligation argument, we concede that an order for commercial liability insurance coverage and the acceptance of the risk implies an obligation to pay for the coverage, just like an order for groceries followed by delivery of the groceries imports an obligation to pay for them. Life insurance presents a different situation. In the absence of specific language to the contrary in the policy, the

insurer will not be considered to have assumed the risk until the necessary premium is paid, and the insured will not be personally obligated to pay the premiums. Vance on Insurance (3rd ed.) p. 94; 29 Am. Jur. 327, Insurance Section 377. At least one premium had been paid prior to protection on all policies placed under protection, and the insureds were not obligated to pay the next premium if they did not want to. This established contractual relationship could only be altered by an express and specific modification; and so far as obligation to pay premiums was concerned, such modification never occurred.

The basic difficulty with the Government's implied contract argument is that the furnishing of protection is just as consistent with indemnity as it is with guaranty.

Whether I am personally liable to the grocer who sends me groceries on the strength of a relative's promise to pay for them depends on the facts, on whether the relative was making a gift of the groceries or agreeing to be secondarily liable.

So here. We only confuse the issue if we say the insured is liable to the insurer because it would be unfair to the insurer if he were not liable. There is no unfairness to the insurer as long as someone is bound to pay him. Whether that someone is the Government alone, or the insured and the Government, depends on what Congress provided for: a gratuity (if a benefit made available to one about to offer his services to his country at an extremely low rate of pay is a gratuity) or a guaranty with rights of full reimbursement.

**2. The Minor Premise.**

The Government makes a strenuous effort to list every instance in which anyone used the word "guaranty" in connection with the 1918 and 1940 Acts (Br. 53-55; 102-103, 107) and argues:

> "The concept of 'guaranty' has a definite and well known legal significance in our law. Congress is presumed to use established legal terms with their recognized meaning." (Br. p. 27.)

Perhaps realizing the weakness of this argument (since Congress did not use the *term* "guaranty" anywhere in the Act); it is further argued (Br. p. 27) that when Congress utilizes a *transaction* familiar to the common law it must be presumed that Congress meant to ascribe to that transaction the usual legal characteristics and consequences.

Though a rose by any other name be still as sweet, calling a mushroom a rose does not make it a rose. In the more precise language of the Government's Brief, p. 27, footnote 16:

> "Just as the word 'contract' is not needed to constitute a contract, it is well settled that the *presence or absence* of the label 'guaranty' is not decisive in determining whether a particular transaction is one of guaranty; instead, the transaction must be viewed in the light of its incidents, the attendant circumstances, and the intentions of the parties." (Emphasis added.)

Whether the position here occupied by the United States should be characterized as that of a guarantor, a surety, a voluntary indemnitor, or as something

apart from any of these familiar categories depends on the facts.

Certainly the United States volunteered to be bound. For reasons of its own, some selfish (it wanted worry-free soldiers), some paternalistic (it owed a duty of protection to these men and their dependents) it proposed these transactions and designated and specified all of the incidents thereof.

The purpose of Article IV was to confer a benefit. The conditions under which the benefit was offered were specified in the Act, officially explained to the Armed Forces and embodied in contract documents. The persons to whom the benefit was offered were peculiarly entitled to receive it, and to consider that to the extent the value of the advantages offered exceeded the cost of the conditions exacted it was one of the perquisites of an otherwise burdensome employment.

The obligation of the United States was not tendered *after* it was requested; it was offered in advance to all who might qualify. Once it had made its standing offer it could not refuse those who met the conditions; and it could not add new conditions after its offer had been accepted.

In these several respects this transaction is a different kind of cat than the breed known to the law as "guaranty". It looks much more like the transaction called "voluntary indemnity".

As a matter of fact the word "indemnify" *is* used in the Act (Sec. 408), and in a context that seems

highly significant. If the Government was a guarantor why should it be "indemnified" rather than "secured" or "reimbursed"?

**3. The Conclusion.**

From these premises the Government jumps to the conclusion that it has the right to be reimbursed by one whose debt it has paid. This is quite a jump. It completely disregards the fact that what the Government took by way of offset differed from and exceeded the amount which it would have been called upon to pay under the 1940 settlement formula. See discussion, Heading VI. C. 2. and 3., pp. 22-29, supra.

The Government attempts to bridge this gap with a whole series of arguments, ending up with the admission that perhaps it did take too much. (Br. 25-28, 37-45.) We have already pointed out the unsoundness and inconsistency of these arguments under Heading VI. C. 2., pp. 22-27, supra and will not plough that ground again.

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**B. THE GENERAL PURPOSES OF THE ACT ARGUMENT.**

The argument (Br. pp. 17-20) that the general purpose of the Act is to provide temporary moratoria not discharge of obligations is in effect an attempt to bolster the common law guarantor argument for if there was no obligation to be discharged the argument is pointless.

The answer to this argument is provided by the Administrator himself in his Decision No. 742 where he says (R. 88-89):

". . . the fundamental basis of the entire Act is protection of the person in service by temporary moratoria on certain obligations—as contract liabilities, rents, taxes and so forth. As this principle could not apply to insurance premiums payable only voluntarily, the device was adopted of having the Government guarantee such payments upon the insured's application."

The serviceman was obligated to pay rent, bills and taxes, to respond to legal process, and perform contractual obligations, but he was not obligated to pay premiums. Accordingly protection of his insurance could not and cannot be forced into the mould of "temporary moratoria on debts". Article IV is the only place in the Act where the Government enters the picture as a third party. It was necessary that it come in *because* the insured was not obligated to pay premiums, and because if it didn't promise to pay premiums on lapsed policies, the insurance companies would be subjected to unfair and probably unconstitutional burdens.

Since something quite different than a temporary suspension of obligations is involved in Article IV analogies drawn from other portions of the Act just will not fit; and since there was no personal obligation to be postponed or discharged the whole argument is, in truth, pointless.

### C. THE CLARIFICATION BY AMENDMENT ARGUMENT.

In another attempt to bolster the common law guarantor argument, the Government claims (Br. pp. 15, 66-70) that by putting an express indebtedness provision into the Act in 1942 Congress was declaring that the law had provided for such an indebtedness all along, that it was not changing but merely clarifying the law.

This is not so because: (1) Section 406 as amended in 1942 is expressly limited to applications subsequently approved. See Heading VI. B. 3. a. pp. 18-19, supra. (2) The intent to exclude previously protected policies is evident in the legislative history. See Heading VI. D. 3. pp. 33-36, supra. (3) Section 408(1) of the 1942 amendments says that the rights and obligations of previously protected insureds are not changed or affected by the amendments. See Heading VI. B. 3. b. pp. 19-21, supra.

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### D. THE GIFT ARGUMENT.

Whatever of real substance there is in the Government's position in this case reduces down in the final analysis to the claim that Congress could not have intended the result we contend for because it imports an intention to make an undeserved gift, because it causes loss to the public purse, or because it favors some servicemen over others. As we have seen the various attempts to find support for the Government's position in the language of the Act do not stand up under scrutiny. The gift argument does not allow of equally searching or equally conclusive examination.

This is because we must here dispute such questions as whether the serviceman *should have* expected to pay for the protection of his insurance, and whether Congress *should have* imposed a liability to reimburse.

Leaving behind the analysis of statutory language and contract documents and venturing into the never-never land of "should have been", we can consider and discuss and try to weigh and balance the circumstances and equities involved.

There can be no question that Congress *could* grant free insurance or free insurance protection to men in the military service. All men who enter the service now get free insurance during their service under the Servicemen's Indemnity Act of 1951. (38 U.S.C. Secs. 851-858.) See also 38 U.S.C. 802 (d), which provided insurance for the beneficiaries of certain men who died or were disabled before applying for National Service Life Insurance. Many other examples of special benefits and perquisites given to military personnel by Congress could be cited. Depending on one's point of view these may be regarded as gifts or as the equivalent of extra pay for a generally low-paid group of people.

What about the inequitable results mentioned in Administrator's Decision No. 742 (R. 86-88) and in the Government's Brief (pp. 12-13, 32-36)? Is there an unjustified "discrimination" between those who let their policies lapse and the beneficiaries of those who died during protection? At the time of application no applicant knew whether he would survive his tour of duty. If he should die the beneficiary

named in his policy was going to get a death benefit that would not have existed without protection. At the time of application he was *told* that that would happen, and in his application he expressly agreed that it should happen. On death there is a fund in existence because of the protection, from which full payment can be made without difficulty. Quite different is the case of the man just out of the service. He has no such fund, he is struggling to re-establish himself as a civilian and very likely needs to watch every penny.

If the recently separated man has the cash to reinstate his protected insurance and thereafter pay premiums thereon, he is substantially better off than the man who does not. Under the circumstances it would seem perfectly fair to require the reinstater to pay back premiums as a price of keeping the policy with its inherent values while allowing the non-reinstater to cut his losses and walk away without further penalty.

And what about the "inequity" of giving "free" insurance to appellants and others like them while requiring premiums from all those who took out National Service Life Insurance? Here again difference of treatment is based on difference of circumstance. Congress could well have considered that the private company insurance taken out by the insured prior to putting on the uniform represented the man's own estimate of what his family then needed, apart from any thought of military service; and that it should be maintained, within the $5,000 limitation, even if he

also could take out National Service Life Insurance. Section 402 of the 1940 Act limited protection to policies taken out at least 30 days before entry into military service. Congress apparently considered that this was all the protection the Government needed against the possibility that insurance would be taken out to take advantage of the "free insurance" provisions of the Act.

Why it is unfair for one insured to apply more cash value than does another toward payment of premiums accruing during protection? When making application the man whose policy already had substantial cash value knew just what he was committing.

In all these cases the Government is putting its finger on the fund, forbidding its alienation, and thus protecting itself as far as it could without requiring a *cash* outlay from a man who had just completed a dangerous and arduous tour of duty in defense of his country.

The supposed inequality between pre-Pearl Harbor soldiers and those who entered the service after October 6, 1942 (See Decision No. 742, R. 88; Br. p. 34, fn. 19) likewise proceeds from difference of circumstance. In October 1940 the new private was paid $21 a month; in October 1942, $50 a month. In October 1940 there were no family allowances for men in the lower enlisted grades; in June 1942 the Servicemen's Dependents Allowance Act (Pub. Law 625, 77th Congress) became law. Those first called were pinched tighter financially, it was more difficult for them to protect their dependents with insurance and otherwise,

their personal sacrifice before Pearl Harbor and after was greater than that of any other group. Further, by 1942 Congress could see that the obligations it had assumed in the 1940 Act involved large amounts of money and could well decide that it did not want to go any further along those lines. In 1940 Congress could well have thought that any loss to the Government would be small. In fact, the entire "difference" shown on final accounting might be covered by cash values and the Government's profit factor.

It must be remembered that the real beneficiaries of Article IV were the dependents of the serviceman who would receive the proceeds of his insurance if he died. Certainly the serviceman could obtain no personal enrichment from the provisions of this Act. Before applying for protection under the Act he had the choice of letting the policy lapse without further financial liability or of risking the capital value of the policy for the protection of the policy beneficiary. If he elected protection under the Act and died in service, both the Government and the beneficiary were protected and the insurance company was stuck with the war risk. If he elected protection and lived, he could only regain his personal interest in the policy by paying the defaulted premiums, plus policy loan interest. In either event, the serviceman himself did not get something for nothing.

The accumulation of cash value during protection (see Br. p. 42) was of no profit to the insured; if he reinstated he paid for it; if the policy lapsed the Government received credit for it. In all cases cash value

accumulating in a given period is less than premiums for that period.

Other matters going to the equities include the various acts and omissions of the Government which we say raise an estoppel (see Heading VI. F. 3., p. 52, supra).

Here are a whole host of considerations of policy which might have been urged on Congress in 1940 when it was considering the legislation in question. We can only speculate as to what Congressional reaction would have been if they had been urged. There is no evidence that they were urged.

To say that Congress *should* have required such reimbursement because of such consideration is to disregard the *fact* that it did not expressly do so.

To say that Congress *did* so require because of such considerations involves indulgence in a highly unreliable form of inverse reasoning (it should have, therefore it did). Such reasoning seems more than a little out of place in a case where there are strong indications in the Act that reimbursement was not intended.

Even without such indications, the *Gilman* case tells us that such considerations are "more appropriately for those who write the laws, rather than for those who interpret them." (347 U. S. at 513.)

## VIII. CONCLUSION.

We respectfully submit that the decision of the Court of Appeals should be affirmed and the District Court ordered to enter judgment in respondents' favor, with interest at the legal rate from date of deduction to date of payment.

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September, 1956.

**(Appendices A, B, C and D Follow.)**

## Appendix A

38 U.S.C. Section 817:

"In the event of disagrement as to any claim arising under this Act (Sections 801-818, 820-823 of this title), suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to the United States Government life (converted) insurance under the provisions of sections 445 and 551 of this title."

38 U.S.C. Section 445:

"In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau (Veterans' Administration) and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia (United States District Court for the District of Columbia) or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled 'An Act to provide for the bringing of suits against the Government of the United States', approved March 3, 1887, and section 10 thereof so far as applicable.

"The term 'claim' as used in this section, means any writing which alleges permanent and total dis-

ability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits and the term 'disagreement' means a denial of the claim by the director (Administrator of Veterans' Affairs) or someone acting in his name on an appeal to the director (Administrator) . . ."

## Appendix B

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Fifth Amendment to the Constitution of the United States.

## Appendix C

### PROFIT FACTOR IN OPERATION OF MONTHLY DIFFERENCE SYSTEM.

If the insurer had ten policies placed under protection in December 1940 each with annual premiums of $50.00 coming due on January 1 of each year and all ten insureds were separated from service December 31, 1944, and allowed their policies to lapse at the end of protection December 31, 1945, and final settlement was made December 31, 1946, the Monthly Difference Reports would have shown the following:

| Report for month of | Charges | Credits | Net |
|---|---|---|---|
| January 1941 | $500.00 | — | $500.00 |
| January 1942 | 500.00 | — | 500.00 |
| January 1943 | 500.00 | — | 500.00 |
| January 1944 | 500.00 | — | 500.00 |
| January 1945 | 500.00 | — | 500.00 |

and certificates, bearing 3% interest, would have been issued to the insurer. On settlement the Government would pay

| | | |
|---|---|---|
| $500.00 on Certificate #1 plus 3% for 6 yrs. or | | $ 590.00 |
| 500.00 on Certificate #2 plus 3% for 5 yrs. or | | 575.00 |
| 500.00 on Certificate #3 plus 3% for 4 yrs. or | | 560.00 |
| 500.00 on Certificate #4 plus 3% for 3 yrs. or | | 545.00 |
| 500.00 on Certificate #5 plus 3% for 2 yrs. or | | 530.00 |
| Total | | $2800.00 |
| Cost per insured (1/10 of total) | | 280.00 |

However, if one insured died on December 31, 1943, one insured paid his back premiums and policy loan interest at 6% compound on the day of separation, December 31, 1944, and the policy of another insured

had sufficient cash value to cover all unpaid premiums with interest thereon at the policy loan rate at final settlement on December 31, 1946, the Monthly Difference Reports would have shown:

| Report for month of | Charges | Credits | Net |
|---|---|---|---|
| January 1941 | $500.00 | — | $500.00 |
| January 1942 | 500.00 | — | 500.00 |
| January 1943 | 500.00 | — | 500.00 |
| January 1944 | 450.00 | 168.83 | 281.37 |
| January 1945 | 400.00 | 231.75 | 168.25 |
| On Final Settlement | | 298.66 | (298.66) |

and on final settlement the Government would have paid:

| | |
|---|---|
| $500.00 on Certificate #1 plus 3% for 6 yrs. or | $ 590.00 |
| 500.00 on Certificate #2 plus 3% for 5 yrs. or | 575.00 |
| 500.00 on Certificate #3 plus 3% for 4 yrs. or | 560.00 |
| 281.37 on Certificate #4 plus 3% for 3 yrs. or | 306.69 |
| 168.25 on Certificate #5 plus 3% for 2 yrs. or | 178.35 |
| Subtotal | $2210.04 |
| Less credit on final settlement | 298.66 |
| Total | $1911.38 |
| Cost per insured (1/7th of total) | 273.05 |

Adjustments to these figures for cash surrender values would complicate the computation without affecting the basic result. Application of surrender value would reduce the cost per policy pro tanto, but the difference between charges and credits due to the difference between 3% simple interest and 6% compound interest would remain.

## Appendix D

**SUMMARY OF EXHIBITS 7, 8, 9, AND 10.**

| | | Column 1 | Column 2 | Column 3 | Column 4 |
|---|---|---|---|---|---|
| | | | | Maximum Due, 1940 Act | |
| Insured | Policy # | Paid to Insurer; Claimed by U.S. | Col. 1, Less One Year of Protection | As of One Year After Separation | On Final Settlement 1/29/49 |
| Plesha | 419814 | $261.05 | $219.61 | $185.87 | $203.11 |
| Kern | 428642 | 264.36 | 209.63 | 160.42 | 187.21 |
| Kern | 395773 | 67.70 | 38.21 | .84 | 18.98 |
| Mabbutt | 420558 | 205.75 | 199.98 | 171.06 | 184.20 |

Column 1 represents unpaid protected premiums plus interest at the policy loan rate, 6% compound, during the period the policies were listed as being under protection. For Plesha and Kern this period ended two years after separation; Mabbutt's policy was withdrawn from protection on February 27, 1947, 14 months after separation. (R. 107, 130.)

Column 2 represents the same calculation except that it assumes protection terminated one year after separation.

Column 3 represents unpaid protected premiums plus interest at 3% uncompounded, from the date of protection to one year after separation.

Column 4 represents the same thing as Column 3, except that interest is calculated to January 25, 1949, the assumed final settlement date. It is assumed that the liability of the company to pay cash value (which under Section 410 became payable one year after separation) did not bear interest. If this liability did bear interest and the rate of interest could be supplied, the figures in Column 4 would be reduced by the amount of such interest.